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**Towards the Utility of a
Wider Range of Evidence in the
Derivation of Sharīʿa Precepts:
Paradigm Shift in Contemporary
Uṣūlī Epistemology**

Hashim Bata

Ph.D.

University of Warwick

May 2013

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Abstract

The fundamental distinction made in Shiite legal epistemology is that between *qaṭʿ* (certainty) and *ẓann* (conjecture). Contemporary Uṣūlī epistemology maintains that in the juristic process of the derivation of Sharīʿa precepts, a mujtahid is prohibited to use any evidence that gives rise to mere *ẓann*. Rather, he must only use evidence that gives *qaṭʿ* of Sharīʿa precepts. Furthermore, this discourse distinctly argues that a mujtahid can also derive knowledge of Sharīʿa precepts through the *ẓann al-khāṣ* (especial conjecture) that is emanated from evidence that is *ẓannī* (conjectural) by nature but is substantiated by the Divine Lawgiver Himself through other *qaṭʿī* (certainty-bearing) evidence. This understanding effectively curtails the derivation of Sharīʿa precepts to only the textual evidence of the Qurʾān and *sunna*, and in the present day this textualist dependency can be criticised for contributing towards the gulf that exists between traditional Shiite jurisprudence and matters that are pertinent to contemporary societies.

In light of this, this study critically analyses the contemporary discourse of Uṣūlī epistemology and explores whether it has the potential to legitimise the epistemic validity and utility of a wider range of evidence in the juristic process of deriving Sharīʿa precepts. It essentially focuses on the strength and rigour of the epistemological underpinnings that are maintained in Uṣūlī legal theory, and by highlighting that these underpinnings and the underlying epistemic assumptions that are prevalent in contemporary Uṣūlī legal epistemology are rationally derived, this study explains how and why the Uṣūlīs have been led to rationally give preference to textual evidence over non-textual evidence. This study concludes that Uṣūlī legal theory has the potential to, and moreover is required to, undergo an epistemological paradigm shift that permits the acceptance of the epistemic validity of a wider range of evidence, other than just those that emanate *qaṭʿ* or *ẓann al-khāṣ*.

Acknowledgements

I would like to express my gratitude to all those who have assisted me and made it possible for me to write this thesis. I am especially indebted to my supervisor Professor Shaheen Sardar Ali from the University of Warwick, and my colleagues and friends/brothers Ali-Reza Bhojani, Riaz Walji and Dr Fanaie, for their immeasurable advice, criticism and encouragement.

The Al-Mahdi Institute in Birmingham has played a huge role in my life, and I believe I would never have attained the skills and competencies to successfully complete a PhD had it not been for my studies on the Four Year Hawza Programme. The Hawza Programme provided me with a thorough grounding in reading, analysing and contextualising Arabic texts, with a great emphasis being placed on the use of modern theories and ideas in the study of religion, theology and language.

I would like to say a special thanks to Shaykh Arif Abdulhussain, my teacher, guide and father. Thank you for the many additional late-night lessons you gave me in my quest to unfold the works of *Farāi'd al-uṣūl* and *Kifāyat al-uṣūl*, this thesis would not have been possible without your incomparable knowledge and unwavering guidance throughout.

Thank you to Gagan.

Finally, thank you to God, the Prophet and his impeccable progeny. If it hadn't been for my visit to Imam Ali in Najaf, I would have not thought of this thesis.

Declaration

I confirm that this thesis is my own work, and I also confirm that this thesis has not been submitted for a degree at another university.

Notes

The transliteration style used in this thesis follows what is now recognised as standard Arabic conventions. Please note that the *tā' marbūṭa* is left as *-a*, as opposed to *-ah*, except in cases of *iḍāfa* where it is written as *-at* before *ḥamzat al-waṣl*.

Please note that no abbreviations for dates are used, and hence when two dates are given together, the format is Hijrī Qamarī/Common Era. When a single date is given in an unqualified manner, it is Common Era.

Regarding references, the first footnote given provides the full citation, including the full name of the author and other additional details. Following this, the subsequent footnotes that mention the same citation are provided in an abbreviated manner.

Introduction

In the Twelver (*Ithnā‘asharī*) Imāmī Shiite¹ jurisprudential discourse, *aḥkām al-Sharī‘a* are described as *aḥkām* (literally: rules) that are commanded or prescribed by God or the *Shāri‘* (the Divine Lawgiver, or more accurately the One who commands or prescribes the Sharī‘a²), which necessitate order and regulation. These rules lay down instructions that direct proper conduct in all spheres of a human beings life, insomuch that following and acting in accordance with them can guide and lead one to prosperity and perfection, in both an individual capacity and a social-communal capacity³. In light of this description, the most fitting explanation of *aḥkām al-Sharī‘a* (or Sharī‘a precepts⁴) is that they are “divinely revealed precepts.”

Despite claiming that Sharī‘a precepts direct humanity as a whole towards perfection, the Shiite jurisprudential discourse maintains that the *mukallaf*, who is an individual that is endowed with the responsibility (*taklīf*) of enacting Sharī‘a precepts, is a person who accepts the religion of Islam and abides by its fundamental theological tenants. *Mukallaf* is thus a general term that refers to an individual who either belongs to the laity, or one who is recognised as a *mujtahid*. The difference between a *mukallaf* and a *mujtahid* is that the latter is someone who performs *ijtihād*, inasmuch as he “strives” and “exhorts

¹ Henceforth referred to as Shiite.

² Henceforth the *Shāri‘* will be referred to as the Divine Lawgiver.

³ See Al-Faḍlī, ‘Abd al-Hādī. *Mabādī al-uṣūl*, (Qum: Maṭbū‘āt Dīnī, 1967) pp. 7-8

⁴ Henceforth referred to as Sharī‘a precepts.

maximum effort” in the pursuit to gain the required ability to derive or extrapolate Sharī‘a precepts from evidence (*dalīl*) that indicate them. In contrast, the former is someone who has not committed himself to such a task, but instead is required to merely follow or imitate (*taqlīd*) the *fiqh* (jurisprudence or the corpus of derived Sharī‘a precepts) of a *mujtahid*.

The hermeneutic methodology, or the systematic framework of interpretation, that is employed by a *mujtahid* to derive *fiqh*, or Sharī‘a precepts, is provided in the discourse of *uṣūl al-fiqh* (legal theory). It is technically described in the contemporary Shiite jurisprudential discourse that the core function of *uṣūl al-fiqh* is to provide an acute study of the general rules (*qawā‘id*) of inference or extrapolation (*istinbāṭ*) that are applied by a *mujtahid* in the juristic procedure of deriving Sharī‘a precepts from the evidence that give knowledge of Sharī‘a precepts⁵.

One of the major concerns of Shiite legal theory is regarding the epistemic validity (*ḥujjiyya*) of “*dalīl*” or “evidence” that indicates upon and reveals knowledge of Sharī‘a precepts. As a result, it is found that the mainstream Shiite jurisprudential discourse, which in the present day is more accurately

⁵ See Muẓaffar, al-Shaykh Muḥammad Riḍā, *Uṣūl al-fiqh*, 2 edn. 2 vols. (Beirut: Mu’assabsa al-‘ilmī li-l Maṭbū‘āt, 1990) vol. 1, p. 5; Faḍlī, *Mabādī al-uṣūl*, p. 5; Instead of defining *uṣūl al-fiqh* as the study of general principles, Ṣadr defines the discourse of *uṣūl al-fiqh* as a discipline that studies the comment elements (*‘anāṣir al-mushtarika*) that are utilised by a *mujtahid* in the process of derivation of Sharī‘a precepts. It must be noted that there is no difference between general principles and common elements. See Al-Ṣadr, Sayyid Muḥammad Bāqir, *al-Durūs fi ‘ilm al-uṣūl*, 2 vols. (Qum: Mu’assasat al-Nashar al-Islāmī, 2006) vol. 1, pp. 42-43

recognised as the Uṣūlī discourse, primarily maintains a four-fold categorisation of evidence that it deems as being epistemologically valid (*ḥujja*). This evidence includes the textual sources of the Qur'ān and *sunna* (tradition of the Prophet and the impeccable (*ma'ṣūm*) Imams⁶) and the non-textual sources of *ijmā'* (consensus) and *'aql* (reason). However, the term *dalīl* is not only restricted to the independent sources of Sharī'a precepts, but it also refers to the hermeneutical methods that are used to interpret and understand the aforementioned independent sources. Therefore, alongside discussing the epistemic validity of the four-fold categorisation of evidence, Uṣūlī legal theory also considers the epistemic validity of hermeneutical methods, whose application they accept as leading to indicate and reveal knowledge of Sharī'a precepts.

Nevertheless, in the present day, numerous Muslim and non-Muslim thinkers have criticised the traditional Muslim jurisprudential discourse for indiscriminately relying upon a textualist derivation of Sharī'a precepts, insofar as it restricts their derivation to only those evidence that have directly been revealed by the Divine Lawgiver, such as the sources of the Qur'ān or *sunna*⁷.

⁶ In the Shiite tradition, the impeccable Imams are the selected decedents of the Prophet who are theologically accepted to be the divinely appointed successors of the Prophet, and hence succeed him in every aspect, which includes being the source of knowledge of Sharī'a precepts. It must be noted that in the Shiite jurisprudential discourse, both the Prophet and the Imams are commonly referred to using the term *al-ma'ṣūm* (the impeccable). Henceforth, the term *ma'ṣūm* will include both the Prophet and the Imams who have been appointed by the Divine Lawgiver as His representatives.

⁷ For the textual dependency that is maintained in the Muslim tradition see Weiss, Bernard G. *The Spirit of Islamic Law*, (Athens Ga.: University of Georgia Press, 1998) pp. 38-66; also see Hallaq, Wael B, *A History of Islamic Legal Theories: An introduction to Sunni uṣūl al-fiqh*, (Cambridge: Cambridge University Press, 1997), pp. 207-255

It is clear that this textualist dependency has evidently led to, or at least is unable to solve, numerous challenges that are faced by Muslims in the present day. An immediate example of a major issue concerning Muslims living in the modern world is the apparent differences that exist between Muslim law⁸ and the derived Sharī‘a precepts, and the modern, or what at times is described as the “Western” discourse of Human Rights. Although the subject of Human Rights is itself not free from criticism⁹, there is no doubt that certain Sharī‘a precepts have been derived that directly conflict it, particularly those that concern the rights of women and the rights of non-Muslims¹⁰. As a result of such incompatibilities, Muslims living in contemporary societies – especially those societies that strictly adhere to the universal declaration of human rights – face the challenge of having to choose to either follow and act in accordance with the norms that are set by society, or to follow and act in accordance with the precepts/norms that are set by their religion.

⁸ Please note that the term Muslim law is commonly used synonymously with the term Islamic law. The term “Islamic” usually connotes something that is directly revealed by the Divine Lawgiver. It will become apparent from this research that although the Divine Lawgiver directly reveals law, since in the modern context law is derived and interpreted by Muslims – or more specifically Muslim *mujtahids* – the term “Muslim law” is more appropriate, as it takes into account the fallibility of Muslim *mujtahids*, and hence the fallibility of the derived Muslim law or Sharī‘a precepts. In essence, the term “Muslim law” recognises the fallibility of the derived law, whereas the term “Islamic law” does not.

⁹ For criticisms against the modern discourse of Human Rights, see Ignatieff, Michael “The Attack on Human Rights,” *Foreign Affairs*, 80.6 (2011) pp. 102-116; regarding how the modern discourse of human rights has been criticised to be incompatible with the Muslim tradition, see An-Na‘im, Abdullahi Ahmed. *Toward an Islamic Reformation; Civil Liberties, Human Rights and International Law*, (New York: Syracuse University Press, 1990), p. 162; Bennett, C, *Muslims and modernity: an introduction to the issues and debates* (London: Continuum International Publishing Group, 2005), p. 65; regarding the critique on how the philosophical foundations of the modern discourse of human rights are western and Eurocentric in nature, see Almond, B “Rights” in Peter Singer (ed.) *A Companion to Ethics*, (Oxford: Blackwell Publishing, 1993), pp. 259-269

¹⁰ See An-Na‘im, *Towards an Islamic Reformation*, p. 11

An immediate example of a direct conflict between the textualist derivation of Sharī'a precepts and the discourse of Human Rights is with regards to the traditional Islamic/Muslim law of apostasy (*irtidād*). An apostate (*murtadd*) is defined as a Muslim – either by birth or by conversion – who renounces Islam, irrespective of whether or not he subsequently embraces another faith. The punishment given to the apostate is the death penalty¹¹, and Muslim jurists have categorised this punishment as a *ḥadd* (fixed) punishment, inasmuch as they claim that God Himself has predetermined the punishment for the apostate, and it is the responsibility of the sovereign to execute it¹². Apart from being given the death penalty, the apostate also does not have the right to inherit, even from those whose co-religionist he has become. Moreover, in the case of apostasy of one or both partners who are married, their marriage contract expires immediately without any need for judicial intervention¹³. Regarding the practical application of the Sharī'a precepts concerning apostasy in modern civil law, Rudolph Peters and Gert J. J. De Vries point out that:

There is no evidence that apostates are still being put to death in Islamic countries. Though in Saudi Arabia the *Sharī'ah* is officially still in force, no contemporary case of executions or apostates have been reported, which may be due to the fact that apostasy does not occur...

¹¹ It must be noted that Shiite law forbids that a female apostate should be executed by the death penalty, instead Shiite *mujtahids* have claimed that she should be imposed with solitary confinement during which she should be beaten during the hours of prayer (*ṣalāt*). See *ibid*

¹² See Īrwānī, Shaykh Bāqir, *Durūs Tamhīdiyya fi-l Fiqh al-Istidlālī*, 3 edn. 4 vols. (Qum: al-Markaz al-‘Ālimī li-l Dirāsāt al-Islāmiyya) vol. 4, pp. 203-234

¹³ See Peters, Rudolph and Gert J. J. De Vries “Apostasy in Islam” in *Die Welt des Islams* 17.1 (1976-1977) pp. 1-25

In this century, some isolated instances have been recorded in Afghanistan. In 1903 and 1925, Moslems who converted to *Aḥmadiyyah* were condemned to be stoned to death. Recently, a curious trial was held in Morocco. On December 14th 1962, the criminal court of Nador condemned some schoolteacher who had been converted to *Bahā'iyah*, to death on the accusation of rebellion, formation of criminal bands and disturbance of religious practices.

There is no doubt that the *ḥadd* punishment for apostasy and its praxis in civil law opposes Article 18 of the Universal Declaration of Human Rights¹⁴, which states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹⁵

The worldly *ḥadd* punishment for – or the Sharī'a precepts regarding - apostasy has been derived from the apparent indication of the textual evidence

¹⁴ Other than Article 18 of the Universal Declaration of Human Rights, the law of apostasy also opposes Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and the 1981 Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion and Belief. See Garces, Nicholas "Islam till death do you part: rethinking apostasy laws under Islamic law and international legal obligations", *Southwestern Journal of Islamic Law* 16 (2010) pp. 229-263

¹⁵ See "The Universal Declaration of Human Right" at <http://www.un.org/en/documents/udhr/index.shtml#a18>

of the *sunna* of the *maʿṣūm*. Thus, in essence it appears that at times the traditional textualist dependency maintained in the juristic derivation of Sharīʿa precepts can be criticised for being in direct conflict with norms that, at least in theory, are universally accepted.

In response to these criticisms, contemporary Muslim thinkers have categorically argued that the Muslim jurisprudential discourse is required, and has the potential, to evolve and bridge the apparent gulf that exists between it and the issues it faces in the contemporary world¹⁶. In essence, it is apparent from the extensive literature of contemporary Muslim thinkers that there is a strong emphasis on introducing the utility of a wider range of evidence that has not traditionally been accepted within the bounds of Muslim legal theory, particularly within the discourse of Shiite legal theory. They argue that other than the traditional four-fold categorisation of sources and hermeneutical methods, knowledge of Sharīʿa precepts can also be acquired from, or in conjunction with, other independent sources such as *maṣlaḥa* (public interest), *istiḥsān* (juristic preference), *ijmāʿ* (consensus), *ʿurf* (social custom) etc. It is further arguable that knowledge of Sharīʿa precepts can also be acquired from

¹⁶ For the contemporary Muslim thought, see *ibid*; Arkoun, Mohammad. “Rethinking Islam Today” in *the Annals of the American Academy of Political and Social Science* 588 (2003) pp.18-39; El-Fadl Khaled Abou. “The Human Rights Commitment in Modern Islam” edited version of an article presented in Runzo, J and Martin, N et al (ed.) *Human Rights and Responsibilities* (Oxford: Oneworld Publications, 2002); Hallaq, *A History of Islamic Legal Theories*; Johnston, David. “A Turn in the Epistemology and Hermeneutics of Twentieth Century *uṣūl al-fiqh*” *Islamic Law and Society* 11.2. pp. 233-282; Rahman, Fazlur. *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1982); Kerr, Malcolm H. *Islamic Reform: The Political and Legal Theories of Muhammad ʿAbduh and Rāshid Riḍā* (Berkeley: University of California, 1966)

the findings of the contemporary discourses of natural science and social science, and thus these findings may also be used as independent sources in the juristic derivation of Sharīʿa precepts. Other than extending the number of independent sources, contemporary Muslim thinkers have also called for the utility of numerous new hermeneutical methods. For example, rather than relying solely upon the traditional acceptance of the hermeneutical primacy of apparent meaning (*aṣālat al-zuhūr*), which is criticised for leading to a literalistic interpretation of the textual sources of Sharīʿa precepts, there exists a necessity to also undertake a contextual reading of the textual sources, in order to arrive at a more accurate derivation of Sharīʿa precepts that meet contemporary demands¹⁷.

Therefore, the central tenet of contemporary Muslim thought is its significant reliance on non-textual or rational evidence. However, since it has mainly operated within the bounds of the mainstream Sunni tradition, its proposed theories have been severely criticised for not adhering to the traditional Sunni theological affiliation with the Ashʿarite thought. One of the fundamental doctrines promoted by Ashʿarite theology is that human intellect, or reason (*ʿaql*), is oblivious to the knowledge of moral truths, rather it expounds that such knowledge is only known by God, as He is the One who postulates the

¹⁷ For instance, the “*maqāsid*” theory proposed by Abū Ishāq al-Shāṭibī (d. 790/1388), see Al-Raysuni, Ahmad. *Imam al-Shatibi’s Theory of the Higher Objective and Intents of Islamic Law* (Virginia: The International Institute of Islamic Thought, 2005); or Fazlur Rahman’s (d. 1408/1988) “double movement theory” see Rahman, *Islam and Modernity*, p. 20; or An-Naʿim’s theory of reversing the traditional principle of abrogation (*naskh*), see An-Naʿim, Abdullahi Ahmed. “The Islamic Counter-Reformation” in *New Perspective Quarterly* 19.1, (2002) pp. 29-35

moral value of either “praiseworthiness” (*ḥusn*) or “blameworthiness” (*qubḥ*) to each individual action. Consequently, knowledge of the moral values of actions, or more specifically knowledge of the morality that is promoted by Sharī‘a precepts, can only be acquired through what He reveals. Ash‘arite theology concludes that knowledge of moral truths, or Sharī‘a precepts, can only be known through the textual evidence of the Qur’ān and *sunna*¹⁸, and as a result by significantly relying upon non-textual and rational evidence, the contemporary Muslim thought is indeed inconsistent with the fundamental theological tenets of the mainstream Sunni tradition.

In contrast to the Sunni tradition, the Shiite tradition holds a theological affinity with the Mu‘tazilite thought. Unlike the Ash‘arites, Mu‘tazilite theology upholds the fundamental doctrine that human intellect or reason is able to ascertain moral truths without the aid of Divine revelation¹⁹, and it maintains the rational ineligibility of praiseworthiness and blameworthiness (*al-ḥusn wa-l qubḥ ‘aqlī*) of actions. Due to their theological appreciation of God’s justice (*‘adl*), the Shiite and the Mu‘tazilite are collectively referred to as the ‘Adliyya (literally: the people of justice). For example, they argue that the act of “giving alms” is recognised as praiseworthy not because its moral

¹⁸ For further discussion on the impact of the Ash‘arite theological thought on the mainstream derivation of Sharī‘a precepts, see Johnston, “Turn in the Epistemology and Hermeneutics of Twentieth Century *Uṣūl al-Fiqh*,” p. 257; Hourani, George F. “Ethics In Medieval Islam: A Conspectus” in Hourani, George F (ed.) *Essays on Islamic Philosophy and Science* (New York: New York University Press, 1975) pp. 128-135; Hourani, George F. *Reason and Tradition in Islamic Ethics* (Cambridge: Cambridge University Press, 1985, pp. 57-66; El-Affendi, Abdelwahab. “Islamic Theology” in Craig, Edward and Leaman, Oliver (ed.) *Islamic Philosophy* (UK: Routledge, 1998) vol. 5 pp. 25-31

¹⁹ For a thorough examination of the difference between the Ash‘arite and Mu‘tazilite theological doctrines and theory, see Hourani, *Reason and Tradition in Islamic Ethics*

property of praiseworthiness has been postulated by the Divine Lawgiver, but because reason independently judges and ascertains that the act of giving alms has the intrinsic moral property of praiseworthiness.

In line with the 'Adliyya theological thought²⁰, it can evidently be seen that the Shiite jurisprudential discourse does not contain any theological constraints that make it unable to accept the epistemic validity (*hujjiyya*) of a wider range of non-textual or rational evidence. In fact, it is due to the 'Adliyya thought that the Shiites have categorically accepted 'aql as independent evidence in the four-fold categorisation of evidence. Nonetheless, despite this, it is found that in practice the Shiite jurisprudential discourse, like the Sunni jurisprudential discourse, displays a preference towards the utilisation of textual evidence over non-textual evidence. In his overall analysis of the textualist dependency promoted in the Muslim jurisprudence, Weiss summarises:

Had God so chosen, He could have let humans depend entirely on reason as the instrument of access to the law. But this in fact has not been the divine plan. Rather, God has chosen to reveal His law through the Prophet (and, for Shi'is, through the Imams). This being the case, it is the first responsibility of every jurist seeking to formulate law to

²⁰ For the analysis of 'Adliyya theological doctrine, see Sobhani, Ja'far. *Doctrines of Shī'ī Islam: A Compendium of Imami Beliefs and Practices* (London: I. B. Tauris, 2001) pp. 50-51; Hillī, 'Allāma. *Kashf al-murād fī sharḥ tajrīd al-i'tiqād: Qism al-Ilahiyyāt*, (Beirut: Dār al-Amira, 2006), pp. 56-62; For the specific impact of the 'Adliyya thought on the discourse of Shiite legal theory, see Gleave, Robert. *Inevitable Doubt: Two Theories of Shī'ī Jurisprudence* (Leiden: Brill, 2000), pp. 183-188

explore the foundational texts to the best of his ability. To the extent that human reason has a role, it is a strictly subordinate one. Muhammad Baqir al-Sadr, a Shi'i jurist of recent times, has in fact gone so far as to say that reason is a potential source of law rather than an actual one. Sadr claimed that whilst reason has in principle the ability to discover the law on its own, this has never happened nor need ever happen, given the existence of the Qur'an and the Sunna, for whatever reason might discover would in any case be bound in the foundational texts²¹.

This statement establishes that in the Shiite tradition, the independent role of reason, or for that matter any rational evidence, has always been dominated by the apparent indication of textual evidence²². The reason why juristic preference is given to textual evidence over non-textual evidence is critically discussed in Shiite legal theory, and indeed one of the most prominent discussions within this discourse is on the subject matter of legal epistemology. The primary function of legal epistemology is to examine how a *mujtahid* may acquire and comprehend knowledge of Sharī'a precepts that exist in the *wāqī'ī* (objective reality) or in the Mind of the Divine Lawgiver. Accordingly, the

²¹ Weiss, *The Spirit of Islamic Law*, p. 39

²² For a thorough evaluation of how the role of reason (*'aql*) as an independent source of Sharī'a precepts has been reduced in Shiite legal theory despite the Shiite acceptance of the *'Adliyya* thought, see Bhojani, Ali-Reza. *Moral Rationalism and Independent Rationality as a Source of Sharī'a in Shī'ī Uṣūl al-Fiqh: In Search for an 'Adliyya Reading of Sharī'a* (unpublished Ph.D. Dissertation: University of Durham, 2013)

hujjiyya (epistemic validity) of evidence that indicate Sharī'a precepts is evaluated.

The fundamental distinction made in Shiite legal epistemology is that between *qaṭ'* (certainty) and *ẓann* (conjecture). Contemporary Uṣūlī epistemology maintains that in the juristic process of deriving Sharī'a precepts, a *mujtahid* is prohibited to use any evidence that gives rise to mere *ẓann* of Sharī'a precepts. Rather, he must only use evidence that gives *qaṭ'*. A distinct feature of this discourse is that it further argues that a *mujtahid* can also derive knowledge of Sharī'a precepts through *ẓann al-khāṣ* (especial conjecture) that is emanated from those evidence that are *ẓannī* (conjectural) by nature but are substantiated by the Divine Lawgiver Himself through other *qaṭ'ī* (certainty-bearing) evidence.

In light of this, this research seeks to critically analyse the contemporary discourse of Uṣūlī epistemology and explore whether it has the potential to legitimise the epistemic validity and utility of a wider range of evidence in the juristic process of the derivation of Sharī'a precepts. Rather than evaluating how contemporary Uṣūlīs have argued for, or rejected, the epistemic validity of each evidence that is available, this research will essentially focus on the strength and rigour of the epistemological underpinnings that are currently maintained in Uṣūlī legal theory. By highlighting that the epistemological underpinnings and underlying epistemic assumptions that are prevalent in the contemporary Uṣūlī discourse of legal epistemology are rationally derived, this

research will explain how the Uṣūlīs have been led to rationally give preference to textual evidence over non-textual evidence. In effect, a critical evaluation of the key epistemological underpinnings will enable us to conclude whether the discourse of Uṣūlī legal theory requires, or has the potential to, undergo an epistemological paradigm shift, which will permit it to accept the epistemic validity of a wider range of evidence, other than just those that emanate *qaṭʿ* or *ẓann al-khāṣ* in the juristic derivation of Sharīʿa precepts.

Apart from the fact that the Shiite jurisprudential discourse contains no theological restraints in accepting a wider range of evidence due to its theological affiliation with the *ʿAdliyya* thought, this research has chosen to specifically focus on the contemporary Uṣūlī discourse because the contemporary Uṣūlī texts of legal theory are studied as core texts in present day traditional Shiite religious seminaries (*hawza*)²³. Furthermore, by taking an “insider” perspective as someone who not only belongs to the Shiite tradition, but has also completed the seminary studies and extensively studied the contemporary texts of *uṣūl al-fiqh*, I maintain the belief that a critical evaluation of the discourse of contemporary Uṣūlī legal theory, or more particularly Uṣūlī epistemology, will not only potentially legitimise the

²³ For more information on the Shiite religious seminaries, together with the information on the core curricula that are taught, see Litvak, M. “Madrasa and Learning in Nineteenth-Century Najaf and Karbalāʾ” in Brunner, R et al (ed.) *The Twelver Shia in the Modern Times: Religious Culture and Political History* (Leiden: Brill, 2001), pp. 58-79; Stewart, Devin J. “The Portrayal of the Academic Rivalry: Najaf and Qum in the Writings and Speeches of Khomeini, 1964-78” in Walbridge, Linda S (ed.) *The Most Learned of the Shiʿa: The Institutions of the Marjaʿ Taqlid* (New York: Oxford University Press, 2001) pp. 216-230; Mallat, Chibli. “Archetypes of Shiʿi law” in *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shiʿi international* (Cambridge: Cambridge University Press, 1993), pp. 29-58

epistemic validity of a wider range of evidence, but can also lead to a normative egalitarian derivation of Sharīʿa precepts. I propose that the most comprehensive way in which this can be achieved is by employing the philological and analytical method that is set forth within the discourse of *uṣūl al-fiqh* itself. The Uṣūlī method consists of textual analysis that builds on, and argues for, the set paradigms within the jurisprudential discourse, and it uses normative argumentation from both textual and non-textual sources that is consistent with the overall Uṣūlī theological or religious framework.

A large number of texts dedicated to Islamic legal studies have debated the exact role and function that *uṣūl al-fiqh* has historically played in the derivation and interpretation of Sharīʿa precepts. Traditionally, *uṣūl al-fiqh* had been described as providing the general rules that must be adhered to in the juristic derivation of Sharīʿa precepts, however it has since emerged as an independent discipline subsequent to the development of the discipline of *fiqh*. As such, some have rendered its function and relevance to be merely nominal²⁴, arguing that its primary purpose was to just systematically justify and defend the pre-occurring Sharīʿa precepts found in the early works of *fiqh* and within prominent social practices of Muslim societies²⁵. Meanwhile, others have adhered to its traditional function and thus have argued that the role of *uṣūl al-fiqh* is to inform how *fiqh* ought to be derived. For instance, the prominent

²⁴ Schact, Joseph. *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), p. 60. For further discussions on the role and function of the discourse of *uṣūl al-fiqh*, see Hallaq, Wael B. “*uṣūl al-fiqh*: Beyond tradition” *Journal of Islamic Studies* 3.2, (1992) pp. 172-202

²⁵ Jackson, Sherman A. “Fiction and Formalism: Towards a Functional Analysis of *Uṣūl al-Fiqh*” in Weiss, Bernard G (ed.) *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), p. 178

contemporary Uṣūlī Muḥammad Bāqir al-Ṣadr (d.1400/1980), in *al-Durūs fi ʿilm al-uṣūl* describes the function of *uṣūl al-fiqh* as the *manṭiq* (logic) of *fiqh*. By this, he meant that similarly to how the discourse of *manṭiq* or logic provides the general principles whose application ensure a correct way of thinking and rational deduction, the discourse of *uṣūl al-fiqh* provides general principles whose function is to ensure that a *mujtahid*'s deduction of *fiqh* is correct. Accordingly, Ṣadr argues that although the emergence of *uṣūl al-fiqh* was subsequent to *fiqh*, *fiqh* was never practiced in isolation of the theoretical injunctions that later became the subject matter of the discipline of *uṣūl al-fiqh*²⁶. Although it is recognised that there exists debate over the exact function of *uṣūl al-fiqh*, this study maintains the view expounded by Ṣadr and proposes that a potential revaluation of Uṣūlī epistemology can effectively influence a normative derivation of *fiqh*.

Although the debate surrounding the relationship that exists between *uṣūl al-fiqh* and *fiqh* is common in both the Shiite and mainstream Sunni jurisprudential traditions, specific engagement with *uṣūl al-fiqh*, in particular regarding Shiite legal epistemology, is a relatively underdeveloped area of study within Islamic legal studies. The most critical works on this discourse have predominantly been concerned with describing its historical development, with the main focus being on the pre-modern period of the Shiite jurisprudential discourse. These works have elucidated that in its formative

²⁶ See Ṣadr, *Durūs* vol. 1, pp.46-47

period, Shiite legal epistemology was developed in the milieu of the theological debates that existed between it and mainstream Sunni jurisprudence, and later as a result of the internal legal debates that existed between it and the Shiite Akhbārī School of jurisprudence²⁷. These works have thus spanned the period from the formative period up until the inception of Murtaḍā al-Anṣārī (d.1280/1864), who is recognised as the pioneer of the contemporary Uṣūlī thought due to the pivotal role he played in sealing the Uṣūlī stronghold over the Akhbārīs in traditional Shiite seminary circles.

Works within Shiite reformist circles – which are composed mainly in Persian as opposed to English – do in fact comment upon the implications of contemporary Uṣūlī legal epistemology on *fiqh*, particularly the works of ‘Abd al-Karīm Surūsh²⁸. However, since these reformist works have mainly focused on proposing a new epistemology or hermeneutical methodology that leads to an egalitarian derivation of *fiqh*, it is found that they do not strictly abide by the principles that are contained within the established framework of *uṣūl al-fiqh*²⁹.

²⁷ For a detailed description of the historical development of the Shiite jurisprudential discourse and its internal schisms and debates, see Calder, Norman. “Doubt and Prerogative: The Emergence of Imāmī Shī‘ī Theory of Ijtihād” *Studia Islamica* 70 (1989), pp. 57-78; Modarressi, Hossein. “Rationalism and Traditionalism in Shī‘ī Jurisprudence: A Preliminary Survey” *Studia Islamica* 59 (1984), pp. 141-158; Gleave, *Inevitable Doubt*; Gleave, Robert. *Scripturalist Islam: The History and Doctrines of the Akhbārī Shī‘ī School* (Leiden: Brill, 2007); Newman, Andrew J. *The Formative Period of Twelver Shī‘ism: Hadith as a Discourse between Qum and Baghdad* (Richmond: Curzon, 2000)

²⁸ See Dahlen, Ashk. *Islamic Law, Epistemology and Modernity: Legal Philosophy in Contemporary Iran* (New York: Routledge, 2003) for a comprehensive contribution of Surūsh in the field of epistemology and its impact on Islamic Law.

²⁹ In his conclusion, Dahlen points out that: “As far as Surūsh’s methodology on jurisprudence is concerned, he is far from locating himself in the tradition of the Islamic philosophy of law. In fact, he believes that philosophy as a pursuit of eternal truth must be abandoned in a temporised world, where all boundaries are under siege from within as well as without” (see *ibid*, p. 351). This categorically establishes that by denying traditional Islamic

In comparison, this research will operate within the set parameters of the contemporary Uṣūlī discourse, as by undertaking an evaluation of their key epistemological underpinnings and rational assumptions, it will critically analyse how Uṣūlīs have argued for, and justified, their discourse of legal epistemology. Rather than proposing a new legal epistemology, this research will determine whether the existing contemporary Uṣūlī framework has the potential to undergo a further paradigm shift, which will enable it to appraise its current discourse of legal epistemology.

By specifically considering contemporary Uṣūlī epistemology, this research will critically analyse the epistemological foundations that are explicated in the Uṣūlī legal theories proposed by Anṣārī and post-Anṣārī *mujtahids*³⁰. An in-depth focus on the legal theory of Muḥammad Riḍā Muẓaffār (d.1384/1964) will be undertaken, whose work entitled *uṣūl al-fiqh* is in fact a core textbook that is currently studied at the intermediary (*suṭuḥ*) level of Shiite religious seminary studies, and must be completed in order for a student to progress to the final stage of *baḥth al-khārij* (graduate research) and formally be recognised as a qualified *mujtahid*³¹. Therefore, this study will provide a critical analysis of post-Anṣārī epistemological underpinnings, through

philosophy of law, Surūsh is operating outside the set parameters of uṣūl al-fiqh, for it will become apparent that the traditional “Islamic” discourse of philosophy – or epistemology – plays a vital role in the contemporary discourse of Shiite legal theory.

³⁰ Henceforth, the term “post-Anṣārī” will be used as a general term that not only includes the opinions and the discourse of scholars who came after Anṣārī, but will also include the opinion and the discourse of Anṣārī himself.

³¹ See Mallat, *The Renewal of Islamic law*, pp. 39-43

predominantly utilising the general framework provided in Muḏaffar's textbook of legal theory.

In order to present the findings of this study in a coherent manner, the research will be divided into five chapters. Chapter One will introduce the discourse of Shiite legal epistemology, by focusing on its historical origin and development. This will be followed by a prelude to the contemporary discourse of Uṣūlī epistemology. Through specifically focusing on Muḏaffar's analysis of *mabāḥith al-hujja* (legal epistemology), this chapter will explain the foundations of contemporary Uṣūlī epistemology, by clarifying important concepts such as its subject matter, the technical meaning of epistemic validity (*hujjiyya*), and the technical meaning of evidence (*dalīl*) etc.

Following this, Chapter Two will provide a detailed analysis of the primary axiom maintained in contemporary Uṣūlī epistemology of the non-validity of *zann* (conjecture per se) in the juristic derivation of Sharī'a precepts. This chapter will thus critically evaluate whether the primary axiom is theologically founded or whether it has been established through rational reasoning, and elucidate how contemporary Uṣūlīs have argued against the epistemic validity of evidence that emanate *ẓannī* knowledge of Sharī'a precepts.

Similarly, Chapter Three will provide a detailed analysis of the Uṣūlī acceptance of the epistemic validity of *qaṭ'* (certainty). It will critically evaluate how the Uṣūlīs have described the nature of *qaṭ'* and subsequently

argued that it is obligatory (*wājib*) to follow and act in accordance with its indication in the juristic process of deriving Sharī'a precepts. This chapter will thus clarify how contemporary Uṣūlīs have upheld the epistemic validity of those evidence that emanate *qaṭ'ī* knowledge of Sharī'a precepts.

After highlighting the primary distinction between evidence that emanates *ẓann* and evidence that emanates *qaṭ'*, Chapter Four will establish how contemporary Uṣūlī epistemology has argued for, and accepted, the epistemic validity of especial conjecture (*ẓann al-khāṣ*) that is emanated from particular evidence. Using Muẓaffar's evaluation as a basis, this chapter will critically focus on the arguments presented by Uṣūlīs in order to substantiate especial *ẓann* that is emanated from one of the most utilised textual evidence in the juristic process of derivation of Sharī'a precepts, namely *khābar al-wāḥid* (the isolated report).

Finally, Chapter Five will evaluate the key differences that exist between the epistemological underpinnings maintained in post-Anṣārī contemporary Uṣūlī thought to the epistemological understanding that was prevalent amongst the Uṣūlīs prior to Anṣārī. Accordingly, using post-Anṣārī literature, this chapter will critically engage with the theories that were proposed by pre-Anṣārī Uṣūlīs to substantiate the epistemic validity of conjecture *qua* conjecture (*ẓann al-muṭlaq*), and clarify how these arguments have been rejected by post-Anṣārī Uṣūlīs. Indeed, this analysis will signify how deeply rooted the post-Anṣārī discourse of legal epistemology is within the overall Shiite Uṣūlī tradition.

In essence, a thorough and critical examination of contemporary Uṣūlī legal epistemology will be presented in the aforementioned chapters, which will undoubtedly provide an analytical insight into the strength and rigour of the epistemological foundations that are expounded within this theory. Furthermore, this study will significantly evaluate whether or not Uṣūlī epistemology has the capacity to legitimise the epistemic validity of a wider range of evidence that can be utilised in the juristic process of deriving knowledge of Sharīʿa precepts.

CHAPTER ONE

Introduction to the Discourse of Uṣūlī Legal Epistemology

It is a widely held belief amongst Shiite Muslims that knowledge of Sharī'a precepts (*aḥkām*) can only be acquired from those individuals who have been directly appointed by the Divine Lawgiver (*shāri'*) as His representatives. In comparison to the mainstream Sunni Schools, the Shiites have upheld that even after the demise of the Prophet, it was still possible to acquire absolute knowledge (*'ilm*) of every aspect of the divine Sharī'a precepts, and they believe that the group of individuals who have been appointed as representatives of the Divine Lawgiver included not only the Prophet, but also the impeccable (*ma'ṣūm*) Imams, who are selected descendants from the family of the Prophet (*Ahl al-Bayt*)³². Accordingly, whilst the impeccable Imams were present, Shiite Muslims had absolute access to knowledge of Sharī'a precepts, as they were able to directly seek their guidance on all legal enquiries concerning how the Divine Lawgiver expected them to act in situations that had not previously arisen during the era of the Prophet. Therefore, whilst the mainstream Sunni Schools actively sought legal solutions to deal with new situations, the Shiites were largely reliant on the impeccable Imams as their source of legal knowledge.

³² For a detailed discussion on the theological beliefs maintained in the Shiite tradition regarding the *ma'ṣūm* i.e. the Prophet and the Imams, see Ḥillī, *Kashf al-murād*, pp. 150-240; Sobhani, *Doctrines of Shī'ī Islam*, pp. 61-96

Owing to this, during the era of the impeccable Imams, Shiite Muslims did not experience the same sense of urgency as the Sunnis did in collecting and interpreting evidence that relayed the Divine precepts of the Sharī‘a, and thus there was no real requirement for producing works on legal theory. Accordingly, unlike the Sunnis, the Shiites did not establish a hermeneutical methodology or systematic epistemological framework upon which they could arrive at, or infer, an accurate derivation or interpretation of Sharī‘a precepts; rather, their legal epistemology simply proposed reliance upon the impeccable Imams of their time. In other words, absolute epistemic access to knowledge of Sharī‘a precepts was historically never restricted for the Shiites whilst the impeccable Imams were present.

However, a keen interest in legal theory developed following the greater occultation (*ghayba*) of the twelfth impeccable Imam in 329/941. During the initial phase of the occultation, Shiite Muslims anticipated his instant return, however, after some time it became apparent that the promised return of the twelfth Imam was not imminent³³. Accordingly, the Shiites had no choice but to adopt and develop a system, which they could use to tackle the legal

³³ The occultation of the twelfth Shiite Imam is split into two phases; the first phase is of the minor occultation (*ghaybat al-ṣuġhrā*), which lasted from 874-941 AD. In this period, the Shiites believe that the twelfth Imam still maintained contact via deputies with the Shiite community. The second phase of the major occultation (*ghaybat al-kubrā*) started from 941AD and has lasted till the present day. In accordance with the Shiite theological doctrine, this phase will last until the twelfth Imam reappears. For a detailed understanding of the Shiite theory of occultation see Hussain, Jassim M. *The Occultation of the Twelfth Imam: An Historical Background* (Tehran: Bunyad Be’thet, 1982); Modarressi, Hossein. *Crises and Consolidation in the Formative Period of Shi’ite Islam: Abū Ja‘far ibn Qiba al-Rāzī and his Contributions* *Imāmite Shi’ite Thought* (New Jersey: Darwin Press, 1993) pp. 89-91 Halm, Heinz. *Shiism*, (Edinburgh: Edinburgh University Press, 1991) pp. 34-38; Ḥillī, *Kashf al-murād*, pp. 238-240

questions and issues that began to arise in the absence of the impeccable Imams. It is important to note that in lieu of this, modern commentators on Shiite jurisprudence are of a mixed opinion regarding when exactly the science of legal theory was introduced within the boundaries of Shiite juristic discourse. For instance, Calder notes that:

In a remarkably short of time the Imāmī Shī‘a, once they had defined the Imam as absent, came to accept the canonical text of the Qur’ān and produced a canonical body of Traditions [or reports] - thereby signalling their submission to the otherwise Sunni principle that the moment of God's intervention in human affairs had passed and that continuing knowledge must be based on texts, the residue and witness of that intervention³⁴.

Thus, it is suggested that prior to the occultation, epistemic value was only granted to those Sharī‘a precepts that were directly obtained from the impeccable Imams, and it was only during post-occultation that Shiite Muslims deemed it necessary to grant epistemic value to the legal knowledge that was available from the Qur’ān and the reports of the traditions (*sunna*) of the *ma‘ṣūm*.

³⁴ Calder, “Doubt and Prerogative,” p. 58

However, in contrast it can be claimed that even during the era of the impeccable Imams, the Shiite community were occupied in preserving and reporting the traditions of the *maʿṣūm*. Indeed, this would imply that during the presence of the impeccable imams, Shiite Muslims also granted epistemic value to at least the reported traditions of the *maʿṣūm*. This stance is supported by the notion that during the presence of the Imams, two prominent tendencies co-existed amongst Shiite Muslims, namely the rationalist tendency and the traditionalist tendency³⁵. The former consisted of individuals who were greatly influenced by the Aristotelian peripatetic mode of thought, and therefore displayed a keen interest in the discipline of theology (*ʿilm al-kalām*). Meanwhile, the latter consisted of those individuals who were more inclined towards the transmission of traditions, and accordingly refrained from any sort of theological debate.

Consequently, it is arguable that if epistemic access to legal knowledge had been restricted to only those instances where direct contact with the impeccable Imams was available, then it would have been futile for the Shiites to collect and preserve traditions of the Imams, as they would not hold any epistemic value. Moreover, it can also be argued that if direct contact with the Imams – or for that matter the *maʿṣūm* – was the single criterion for acquiring knowledge of Sharīʿa precepts, then this would assume that every Shiite Muslim had such direct access. However, this is clearly not true, as the Shiites

³⁵ See Modarressi, “Rationalism and Traditionalism,” pp. 147-148

were demographically spread across the Muslim empire, and thus it would have been unfeasible for every Muslim to acquire legal knowledge directly from the Imams³⁶. Accordingly, it is more than reasonable to suggest that the widespread Shiite communities sent representatives, whose function was to acquire legal knowledge from the Imams and then report it back to their respective communities. Therefore, it is highly probable that the traditions of the Imams were recognised as epistemologically valid amongst the Shiites even during the time of the Imams.

Nonetheless, in the Shiite jurisprudential tradition, the rationalist Shiite School gained significant prominence over the traditionalist school, resulting in the formation of Shiite legal theory. It is found that the initial legal theory works of al-Shaykh al-Mufīd (d.413/1022) and al-Sharīf al-Murtaḍā (d.436/1044) were developed alongside a polemic encounter with the mainstream Sunnis³⁷, and thus the legal epistemology that evolved rejected the epistemic validity of evidence that were commonly accepted within the mainstream Sunni tradition - namely *qiyās* (jurist analogy), *ijtihād* (personal opinion of a jurist) and *al-akhbār al-āḥād* (the isolated reports)³⁸. It was claimed that *qiyās*, *ijtihād* and *akhbār al-āḥād* were evidence that produced mere conjecture (*ẓann*), which in accordance with the rationalist Shiites was not sufficient in producing or

³⁶ As it will be seen in Chapter Five, the Uṣūlīs too maintain that it was not possible for each Muslim to access the Imam, and as a result they utilised the verse of *naba'* (49:6) from the Qur'ān to substantiate this point and consequently prove the epistemic validity of the isolated report (*khābar al-wāḥid*) of the *ma'sūm*.

³⁷ See Calder, "Doubt and Prerogative," pp. 57-60

³⁸ *ibid*, p. 59

revealing knowledge of Sharīʿa precepts. Therefore, during its formative period, Shiite legal epistemology was very rigid in accepting the epistemic validity of evidence used in the derivation of Sharīʿa precepts, inasmuch as the Shiites only accepted evidence which they believed were able to provide certainty (*qaṭʿ*) or absolute knowledge (*ʿilm*) of Sharīʿa precepts. This evidence included the Qurʿān, traditions of the *maʿṣūm*, which were mediated through widely narrated reports (*mutawātir*), consensus of Shiite jurists (*ijmāʿ*), and independent rational knowledge (*ʿaql*).

However, it is noted that the first epistemological paradigm shift within the Shiite jurisprudential discourse was incepted by Shaykh al-Ṭūsī (d.460/1067). His *ʿUddat al-uṣūl* was the first detailed and comprehensive research undertaken within Shiite legal theory. Speaking of its outcome, Ṣadr elucidates:

His [i.e. Ṭūsī's] works serve as the line of demarcation between the era of preparation and that of maturity. He brought the preparatory era to a close and initiated the era of maturity, a period in which both jurisprudence and *uṣūl* became disciplines with their own specific criteria, methods and modes of scholarly precision³⁹.

³⁹Ṣadr, Muḥammad Bāqir, *Principles of Islamic Jurisprudence: According to Shiʿi law* (London: ICAS, 2003), pp. 33-34

The major revelation from Ṭūsī's research described that, in line with the established Shiite understanding, the tradition (*sunna*) of the *ma'sūm* that was revealed from isolated reports (*akhbār al-āḥād*) did not give rise to absolute *'ilm* (knowledge) of Sharī'a precepts. However, he was the first recognised Shiite *mujtahid* to have argued using other rational and textual injunctions that specific permission has been granted by the Divine Lawgiver, which allows a *mujtahid* to follow and act in accordance with the conjectural (*ẓannī*) isolated report in his derivation of Sharī'a precepts. Thus, by maintaining strict yardsticks, which only permit a *mujtahid* to follow and act in accordance with the isolated reports that were transmitted by a chain of trustworthy reporters who belonged to the "True Sect"⁴⁰, Ṭūsī initiated the first epistemological paradigm shift within the discourse of Shiite legal theory.

Nonetheless, despite the continuing polemic encounter with the Sunnis, the Shiites were significantly inspired, and continued to be inspired, by Sunni legal theory, especially the legal theory proposed by the Shāfi'ī, Abū Ḥāmid al-Ghazālī (d. 505/1111)⁴¹. Ghazālī, in his *al-Mustaṣfā*, wrote a lengthy introduction to Aristotelian formal logic, in order to present the epistemological and hermeneutical arguments that were discussed in traditional legal theory in a logical manner, primarily through using Aristotelian

⁴⁰ See Calder, "Doubt and Prerogative," p. 62

⁴¹ See Stewart, Devin J. *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System* (Salt Lake City: University of Utah, 1998), pp. 61-110

sylogistic reasoning⁴². Following this trend set by Ghazālī, Sunni works on legal theory began to legitimise a broader range of Aristotelian logical methods or evidence, such as analogy⁴³ and *a fortiori* argument. However, despite this inclusion of “new” evidence, Ghazālī and his contemporaries significantly maintained the importance of following and acting in accordance with traditional epistemological typology that appraised the authenticity and clarity of evidence on the scale of certitude (*qaṭʿ*) and conjecture (*ẓann*)⁴⁴. This thus signifies that although early mainstream Sunni jurisprudence accepted the epistemic validity of evidence that gave rise to *ẓann*, this was thoroughly evaluated prior to doing so.

Ghazālī’s endeavour combined with the development of mainstream Sunni legal theory had an immense influence on Shiite legal theory, particularly upon the Shiite School of Ḥilla in the seventh/thirteenth century. One of the most celebrated champions of Shiite jurisprudence originating from Ḥilla was al-ʿAllāma al-Ḥillī, who played a pivotal role in the development of Shiite legal

⁴² It is vital to note that prior to al-Ghazālī’s novel contribution, Sunni legal theory held pure logical arguments as necessarily linguistic, for the conclusion of such arguments was seen to be derived from the language of textual evidence rather than through the medium of rational inferences. The arguments usually presented were either deductive in nature or *argumenta e contrario*, and both types attempted to establish conclusions, or legal precepts, which necessarily followed a set of textual premises, see Hallaq, Wael B. “Logic, Formal Arguments and Formalization of Arguments in Sunni Jurisprudence” *Arabica* 37.3. (1990), pp. 315-317

⁴³ Hallaq points out that there was contention amongst Sunni scholars regarding the correct meaning of *qiyās*. On one hand, the likes of Ghazālī argued that in the Muslim jurisprudential discourse, the term *qiyās* refers to analogical reasoning in a real sense, and categorical syllogism in a metaphorical sense. On the other hand, others at the time argued that *qiyās*, in legal theory, refers to both analogical reasoning and categorical syllogism in the real sense. For a detailed discussion on this, see Hallaq, Wael B. *Ibn Taymiyya against the Greek Logicians* (Oxford: Clarendon, 1993), p. 48

⁴⁴ See Hallaq, *A History of Islamic Legal theories*, pp. 137-138

theory, (d. 726/1325)⁴⁵. ‘Allāma is renowned to be one of the most prominent Shiite *mujtahids*, who explicitly shifted the epistemological paradigm of Shiite legal theory by openly accepting the epistemic validity of *ẓann* in the derivation of Sharī‘a precepts, and arguing for the necessity of accepting the *ẓann* that emanated from the isolated reports and *ijtihād* (opinion of jurist)⁴⁶.

Apart from this, ‘Allāma is also recognised as the first Shiite *mujtahid* to explicitly imitate the four-fold categorisation of evidence that was prevalent in the Sunni jurisprudential discourse. As a result, ‘Allāma concluded that knowledge of Sharī‘a precepts could be obtained from the Qur’ān, *sunna* (irrespective of whether it is mediated by widely narrated reports or isolated reports), *ijmā‘* and *dalīl al-‘aql* (rational evidence)⁴⁷. Therefore, this categorisation establishes that ‘Allāma not only accepted the epistemic validity of *qaṭ‘ī* (certainty-bearing) evidence, which gives absolute knowledge of Sharī‘a precepts, but also *ẓannī* evidence, which is always prone to error.

⁴⁵ For detail on the role ‘Allāma played in the development of Shiite legal theory, see Moussavi, Ahmad K. “Usuliyya” in Martin, Richard C (ed.) *Encyclopaedia of Islam and the Muslim World*, 2 vols. (USA: Macmillan Reference, 2004), vol. 2, pp. 717-718

⁴⁶ It is vital to note that for ‘Allāma, *ijtihād* does not equate to the personal opinion (*ra’y*) of a *mujtahid*, rather it indicates on the *mujtahids* maximum efforts in acquiring knowledge of legal precepts from evidence that are deemed to be epistemologically valid. See Calder, “Doubt and Prerogative,” p. 67

⁴⁷ The four-fold characterisation of sources within Sunni Schools includes the Qur’ān, *sunna*, *ijmā‘*, and *qiyās* (analogical reasoning). It should be noted that not all Sunni Schools agree on the epistemic validity of all these sources. For a detailed study of the Sunni discourse on the epistemic validity of these sources, see Zysow, Aron. *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (unpublished Ph.D. Dissertation: Harvard University, 1984)

It is possible to assert that the epistemological shift initiated by ‘Allāma was not only due to the emergence of evolving societal factors that had not previously arisen during the formative era, but was also due to the influence of the highly effective combination of formal logic and traditional epistemology that was presented in Sunni legal theory. ‘Allāma’s legal theory was endorsed, and dominated the works of subsequent writers of Shiite legal theory. Calder argues that this widespread acceptance was because it enhanced the authority of the opinion of the *mujtahid*, and since writers of Shiite legal theory were all recognised as *mujtahids*, ‘Allāma’s legal epistemology granted their derivation of Sharī’a precepts with legitimacy⁴⁸. For example, one of the most prominent works that followed the efforts of ‘Allāma was entitled *Ma‘ālim al-Dīn* by Ḥasan b. Shahīd al-Thānī. Ibn Shahīd Thānī supported and emphasised ‘Allāma’s acknowledgment of conjuncture in the derivation of law, and indeed went further to propose that the acquisition of certain knowledge was relatively impossible in legal rulings that were not already widely established and accepted (such as *ṣalāt* and *zakāt*)⁴⁹.

The writings of ‘Allāma and Ibn Shahīd al-Thānī were studied as textbooks within circles of Shiite seminary studies, and a number of commentaries and super-commentaries were written in order to explain the legal epistemology that they proposed. Accordingly, although there remained menial differences of

⁴⁸ See Calder, Norman. “The Structure of Authority in Imāmī Shī‘ī Jurisprudence” (unpublished Ph.D. Dissertation: School of Oriental and African Studies, University of London, 1980)

⁴⁹ Ibn Shahīd al-Thānī’s understanding of how there is no access to certain knowledge (*qaṭ’/‘ilm*) of Sharī’a precepts is discussed in detail in Chapter Five.

opinion regarding the remit and scope of legal epistemology, mainstream Shiite jurists during this era accepted the epistemic validity of *ẓann*, by reinforcing the epistemic validity of evidence such as the isolated reports and *ijtihād*.

Nonetheless, ‘Allāma’s epistemological division of knowledge into *‘ilm* and *ẓann* was met with opposition, and particularly received significant hostility from Muḥammad Amīn al-Astarābādī (d. 1036/1627), who is arguably recognised as the initiator of the Akhbārī movement⁵⁰. In his *al-Fawā’id al-Madaniyya*, al-Astarābādī provided an extensive critique of the rationalist school, which by now was composed of *mujtahids* who sought to maintain ‘Allāma’s juristic system. Indeed, it was during this era that the rationalist school, and followers of ‘Allāma’s legal theory, were categorically recognised as belonging to the Uṣūlī School. Therefore, approximately three hundred years following the death of ‘Allāma, the Shiite Muslim tradition witnessed the inauguration of a legal schism that produced two distinct schools of jurisprudence, namely the Akhbārī School and the Uṣūlī School⁵¹.

One of the major contentions that Astarābādī and the Akhbārī movement had against the Uṣūlī School related to the latter’s acceptance and adoption of

⁵⁰ Some argue that the initial phases of the Akhbārī movement predated Astarābādī, However, it is vital to note that Gleave claims that although there was use of the term Akhbārī in works prior to that of Astarābādī, it is not conclusive enough to suggest that it referred to the same intellectual trend initiated after Astarābādī. For instance, see Gleave, *Scripturalist Islam*, pp. 1-30

⁵¹ For a detailed study of the Akhbārī movement, its intellectual trend and its interaction with the Uṣūlīs, see Newman, *The Formative Period of Twelver Shi’ism*; Gleave, *Scripturalist Islam*; Modarressi, “Rationalism and Traditionalism”; Mutahhari, Murtada “The Role of *Ijithad* in Legislation” *Al-Tawhid: A Quarterly Journal of Islamic Thought and Culture*, 4.2, (n.d.)

Sunni legal theory. The Akhbārīs claimed that the legal epistemological typology of *qaṭʿ* and *ẓann* was flawed, and they argued that anything based upon *ẓann* was not epistemologically valid, by identifying this supposed epistemic validity as a Sunni innovation that had been dishonourably accepted by the Uṣūlīs within the folds of Shiite jurisprudence. The Akhbārīs argued that evidence that emanated *ẓann* did not have any epistemic value and thus they rejected evidence that gave rise to mere conjecture of Sharīʿa precepts, through maintaining that it was only possible to attain knowledge of Sharīʿa precepts through evidence that emanates *qaṭʿ*. In turn, the Akhbārīs rejected the four-fold categorisation of evidence that had been presented by ʿAllāma, and they venomously denied the epistemic validity of *ijmāʿ*, *dalīl al-ʿaql* and at times even the Qurʾān. Alternatively, the Akhbārīs limited the epistemic discovery of law exclusively to the *sunna*, or more particularly the reports (*akhbār*) of the *maʿṣūm*. They maintained that only the *maʿṣūm* and their reported *sunna* possessed the ability to reveal knowledge of Sharīʿa precepts, on the basis that their transmitted *akhbār* were historically accurate and authentic, and that only the *maʿṣūm*, due to their *ʿiṣma* (infallibility), possessed the ability to understand the absolute ordinance and will of the Divine Lawgiver.

In addition to their rejection of the four-fold categorisation of evidence, the Akhbārīs also rejected the epistemic validity of *ijtihād* or the juristic process of the derivation of Sharīʿa precepts by a *mujtahid*. They argued that the concept of *ijtihād* once again implied a false Uṣūlī distinction between *ilm* and *ẓann*. Instead, Gleave highlights that in place of *ijtihād*, the Akhbārī School proposed

a legal methodology that attempted to ensure that Sharī‘a precepts could only be derived from certainty-bearing inviolable evidence (i.e. *akhbār* or at times the Qur‘ān) whose function was to reveal knowledge of the divine ordinances to the extent and manner in which their intended meaning or purpose could be interpreted with certainty⁵².

The Akhbārī position proved to be immensely popular in the Shiite world, and various prominent scholars, both in Safavid Iran and outside Iran, began to identify themselves as Akhbārīs. Gleave notes that it was supposedly so popular within the shrine cities of Iraq that those who still adhered to ‘Allāma’s position were afraid to voice their opinion in the public sphere. Nevertheless, during the thirteenth/eightieth century, the popularity of the Akhbārī School began to diminish⁵³. This was predominantly due to the efforts of Muḥammad Bāqir al-Bihbihānī (d. 1205/1790-1), who, together with his disciples⁵⁴, is famously recognised to have initiated the widespread acceptance of the Uṣūlī thought within the Shiite tradition. In a remarkably short amount of time following Bihbihānī’s works, the Uṣūlī School once again regained its prominence, and dominated the academic circles of Shiite seminaries. Training

⁵² See Gleave, *Scripturalist Islam*, pp. 60-101

⁵³ It should be noted that Gleave points out that the Akhbārī influence has in the present day survived in parts of southern Iran, the Gulf and the Indian subcontinent. However, its adherents are not intellectually active to a great degree. See Gleave, *Scripturalist Islam*, p. xxi

⁵⁴ For a detailed analysis of al-Bihbihānī and his encounter with the “neo-Akhbārī” Yūsuf b. Aḥmad al-Baḥrānī, see Gleave, *Inevitable Doubt*. It is vital to note that Baḥrānī is recognised as a “neo-Akhbārī” due to him following a moderate approach by not accepting some of the radical arguments of the early Akhbārīs and accepting some the arguments of the Uṣūlīs. Also, see Cole, Juan R I. “Shaykh Ahmad al-Ahsa’I on the Sources of Religious Authority” in Walbridge, Linda S (ed.) *The Most Learned of the Shi‘a: The Institutions of the Marja‘ Taqlid* (New York: Oxford University Press, 2001), p. 83

mujtahids were now following the curricula that emphasised the Uṣūlī epistemological underpinnings. Nonetheless, the Akhbārī influence upon the Shiite tradition was so significant that a significant portion of Uṣūlī legal epistemology is in fact devoted to clarifying and refuting the theoretical and epistemological misconceptions that were charged against the Uṣūlīs by the Akhbārīs.

Nonetheless, approximately a decade following the restitution of the Uṣūlī stronghold, Shaykh Murtaḍā al-Anṣārī (d. 1280/1864) implemented a further radical shift in the Shiite juristic discourse by introducing a range of new and developed elements from Muslim philosophy and logic⁵⁵. One of Anṣārī's major contributions to legal epistemology, which arguably sealed his prominent position in the academic circles of Shiite seminaries that exists until the present day, was his clarification that the contemporary discourse of Uṣūlī epistemology was rooted within the Shiite tradition. As a result, Anṣārī and his contemporaries established the non-validity of any evidence that gave rise to *ẓann* (conjecture per se) in the juristic process of deriving Sharī'a precepts, and rather they advocated that only evidence that emanated especial *ẓann* (or *ẓann al-khāṣ*) could be deemed as epistemologically valid, as the juristic utility of such evidence has been permitted by the Divine Lawgiver Himself.

⁵⁵ For a detailed discussion on the impact of the Anṣārī legal theory on his contemporaries, see Faḍlī, 'Abd al-Hādī. *Durūs fī uṣūl fiqh al-Imāmiyya* 2 vols. (Beirut: Markaz al-Ghadīr, 2007) vol. 1, pp. 81-83

Apart from being one the chief pioneers who critically argued for a distinction between *ẓann* and *ẓann al-khāṣ*, Anṣārī was also the first Uṣūlī scholar to systematically provide a rational framework upon which he elucidated that apart from obtaining knowledge of Sharī‘a precepts by referring to the traditional typology of *qaṭ‘* or *ẓann*, it was also possible to obtain this knowledge in cases of *shakk* (doubt). Bearing this in mind, Anṣārī systematically organised a four-fold categorisation of procedural principles (*uṣūl al-‘amaliyya*), whose function was to provide a *mukallaḥ* – or more specifically, a *mujtahid* – with a practical standpoint, or “knowledge” of a Sharī‘a precept, in situations where he possesses doubt due to a lack of sufficient evidence that either emanates *qaṭ‘* or especial *ẓann* of the Sharī‘a precept⁵⁶.

Undoubtedly, Anṣārī’s contribution to legal epistemology extended the remit of the jurisprudence discourse, and effectively increased the authority of *mujtahids*, as they were now able to broaden the authority of their own profession into a wider sphere of human activity⁵⁷. Anṣārī’s efforts made him prominently recognised as the most learned *mujtahid*, and he was termed as the “supreme exemplar” (*marja‘ al-taqlīd*). His methodology of teaching subjects like *fiqh* and *uṣūl al-fiqh* attracted a large number of students, and his work on

⁵⁶ This is further discussed in this chapter under *The Difference between Substantiated Evidence and Procedural Principles*. For a detailed analysis of Anṣārī’s contribution to the discourse of Shiite legal theory, in particular his four-fold categorisation of *uṣūl al-‘amaliyya*, see Anṣārī, al-Shaykh Murtaḍā. *Farāī‘ d al-uṣūl* 2 vols. (Beirut: Mu‘assasat al-Nu‘mān, 1991), vol. 2, pp. 308-402

⁵⁷ See Litvak, *Shi‘i scholars of nineteenth-century Iraq*, pp. 71-74.

legal theory entitled *Farāi'd al-uṣūl* (also known as *Rasā'il*) is a core part of the curriculum in present day traditional Shiite seminaries. More importantly, Anṣārī's influence and contribution to the development of Shiite legal epistemology has generally remained unchallenged within the orthodoxy.

Nevertheless, amongst the more contemporary influential Uṣūlī scholars who originate from the intellectual heritage of Anṣārī is Muḥammad Riḍā Muẓaffar (d. 1384/1964). Muẓaffar was trained as a *mujtahid* at the religious seminary of Najaf in Iraq, and his teachers included the respected Mirzā Ḥusayn al-Na'īnī (d. 1355/1936) and Muḥammad Ḥusayn al-Gharawī al-Iṣfahānī (also known as Ayatollah Kompāni) (d. 1365/1945). Upon qualifying as a *mujtahid*, Muẓaffar played a pivotal role in developing the religious seminary of Najaf, by making a novel contribution in producing an organised and regulated curriculum that till date is used in Shiite religious seminaries to train *mujtahids*. Muẓaffar made a particularly significant contribution to the orthodox Shiite scholastic endeavour by writing about the significant deliberations made by influential Shiite scholars on subjects such as *uṣūl al-fiqh*, logic (*manṭiq*), theology (*kalām*) etc. in an accessible and modern style. Indeed, in his works on legal theory, Muẓaffar provides a comprehensive and well-written systematic framework, which elucidates upon the most important and influential arguments proposed by the orthodox protagonists of Shiite legal epistemology. As a result, Muẓaffar's *Uṣūl al-Fiqh* is an essential textbook that must be completed by a trainee *mujtahid* at the intermediary (*suṭuḥ*) level as a necessary requisite before he is able to progress to the final stage of *baḥṭh al-*

khārij (graduate research), and formally be recognised as a qualified *mujtahid*⁵⁸.

In essence, the importance and reasoning behind focusing an in-depth study on Muḏaffar's *Uṣūl al-Fiqh* stems not only from the fact that his work on legal theory and his influential thought is studied at the intermediary level, but also because his work clearly elucidates upon key areas, such as the relevant ideas, arguments, terminologies, and categories that have been proposed over the general historical development of Shiite legal epistemology. Therefore, although this research specifically focuses on the epistemological underpinnings that are maintained in contemporary post-Anṣārī Uṣūlī legal theory, it primarily refers to the Uṣūlī framework provided by Muḏaffar.

1.1 The Discourse of Legal Epistemology in Uṣūl al-Fiqh

The contemporary discourse of *uṣūl al-fiqh* can broadly be divided into four key parts⁵⁹. The first part focuses on *mabāḥith al-alfāz* (literally: the discussion on expression) or the discourse of semantics. The discussion of semantics is commonly found in all works of Muslim legal theory, irrespective of whether

⁵⁸ It should be noted that prior to *baḥth al-khārij* a trainee *mujtahid* is required to undertake two levels of studies, *al-muqaddima* (prelude) and *suṭuḥ* (intermediary studies). Muḏaffar's *Uṣūl al-Fiqh* is taught at both these levels. For the common curriculum taught at Shiite religious seminaries, see Mallat, *The renewal of Islamic law*, pp. 39-43

⁵⁹ For the categorisation of the common division of chapters found in the discourse of *uṣūl al-fiqh*, see Faḏlī, *Durūs fī uṣūl al-fiqh al-Imāmiyya* vol. 1, p. 12

they adhere to the Sunni doctrine or the Shiite doctrine. It focuses on a wide range of key orthodox hermeneutical methods that are used to interpret the linguistic indications or significations of the apparent meaning obtained from textual evidence that reveals knowledge of Sharīʿa precepts. For instance, a common example of a semantic discussion found in works of *uṣūl al-fiqh* relates to the signification of the verbal commands (*awāmir*) that are found in textual evidence. Here, the Uṣūlīs consider whether or not the apparent indication of the verbal command of the Divine Lawgiver denotes an obligation, insofar as it is necessary for the *mukallaf* to enact it, or whether it merely denotes a recommendation, insofar as it is not necessary to be enacted. Other similar discussions in *mabāḥith al-alfāz* include studies on the textual significations of *al-nawāhī* (the verbal prohibitions), *al-manṭūq wa-l maḥmūd* (explicit and implicit textual indications), *al-ʿām wa-l khāṣ* (general and specific textual indications), *al-muṭlaq wa-l muqayyad* (unrestricted and restricted textual indications), and *al-mubayyan wa-l mujmal* (clear and ambiguous textual indications) etc.

The second part of contemporary *uṣūl al-fiqh* focuses on the *mabāḥith al-ʿaql* (literally: discussion on rationality) or the discourse of rational judgments. This discussion focuses on the rational judgments or precepts (*aḥkām al-ʿaql*) that are obtained by the human intellect, and a distinction is made between rational precepts that are independently inferred from reason (*mustaqilāt al-ʿaqliyya*), and rational precepts that are not inferred independently from reason (*ghayr mustaqilāt al-ʿaqliyya*) but rather are based on textual evidence. For instance, a common example given for the former type is the rational precept that deems

that “justice is obligatory (*wājib*).” This precept is arrived at through reason without the aid of any textual evidence, as it is upheld within the Shiite ‘Adliyya tradition that the human intellect can independently judge that the act of justice carries the intrinsic property of praiseworthiness (*husn*), and since anything that is judged as “praiseworthy” by reason is also judged the same by the Divine Lawgiver, reason (*‘aql*) independently judges the act of justice to be “obligatory.” On the other hand, an example for the latter type is the rational precept that deems that “it is obligatory to obtain correct travel documents prior to performing the obligation of religious pilgrimage (*hajj*).” In this case, the rational precept of the obligation of obtaining the correct travel documents is dependent upon the religious precept (*hukm al-shar’ī*) of the obligation of religious pilgrimage, and thus cannot be intellectualised independently⁶⁰.

The third part of contemporary *uṣūl al-fiqh* focuses on the *mabāḥith al-ḥujja* (literally: discussion on authority) or the discourse of legal epistemology. This discussion focuses on the epistemological underpinnings that are accepted in the discourse of Shiite legal theory, and evaluates the *ḥujjiyya* (authority, or epistemic validity) of specific evidence (*adilla*) – whether they are independent sources or hermeneutic methods - from which it is possible to obtain knowledge of Sharī’a precepts. Muḥaffar begins his discourse on legal epistemology by stating that:

⁶⁰ There are various types of *ghayr mustaqilāt al-‘aqliyya*. The example mentioned here is of *muqadimāt al-wājib* (literally “preliminary of an obligation”). For a detailed discussion on *ghayr mustaqilāt al-‘aqliyya*, see Muḥaffar, *Uṣūl al-fiqh* vol. 1, pp. 212-312; For a concise introductory discussion, see Faḍlī, *Mabādī al-uṣūl*, pp. 95-111

Indeed our objective from this discussion – the “discussion on authority” - is to determine what is suitable in being an evidence and authoritative in [deriving] Sharī‘a precepts, so that we can reach the precepts of God the Most High, that are in the objective reality (*al-wāqī‘ī*). If through the evidence [which are evaluated] we are able to reach the objective reality [or the Sharī‘a precept], then this is what we intend, and this is the ultimate objective. However, if we commit a mistake, then we are excused (*ma‘dūrīn*) and are not chastised for acting in contradiction to the objective reality⁶¹.

This statement clearly indicates that the primary function of legal epistemology is to determine or evaluate the epistemic validity of evidence that gives knowledge of Sharī‘a precepts that exists in the Mind of the Divine Lawgiver or in the objective reality (*wāqī‘ī*). Thus, if by following and acting in accordance with evidence whose epistemological validity is determined, a *mukallaf* - or more accurately a *mujtahid* - is to in actual fact reach the objective reality, then undoubtedly this is the “ultimate objective.” However, if on the other hand, a *mujtahid* does not obtain knowledge of the Sharī‘a precept that exists in the Mind of the Divine Lawgiver, then in line with the Uṣūlī understanding, he cannot be held accountable and be subjected to chastisement in the hereafter. This illustrates that the discourse of Uṣūlī epistemology not

⁶¹ Muḥaffar, *Uṣūl al-Fiqh* vol. 2, p. 7

only establishes how it is possible to attain knowledge of Sharī'a precepts, but also clarifies how it is possible to have immunity against accountability.

In light of this, Muḏaffar explicates the post-Anṣārī Uṣūlī view, which advocates that unlike the *ma'ṣūm*, it is possible for a *mujtahid* to err in the juristic process of deriving Sharī'a precepts. However, since a true *mujtahid* is one who exerts maximum effort in following a methodology (*tarīq*) from which he only derives legal precepts based on evidence that he knows – with certainty - has been prescribed by the Divine Lawgiver, he is granted with excusability and cannot be held accountable. Muḏaffar clarifies this position by giving the example that if a *mujtahid* acts in accordance with the indication of an isolated report – which, as discussed above, became commonly accepted as an epistemologically valid evidence amongst all Shiites – then it is possible for him to arrive at knowledge of the Sharī'a precept that exists in the objective reality. However, due to the nature of the isolated report, it is also possible for a *mujtahid* to err and thus derive a Sharī'a precept that in fact is contrary to the objective reality. In this instance, Muḏaffar concludes that a *mujtahid* would be granted with excusability, and be immune from being held accountable or subject to cherishment, because the epistemic validity of the isolated report has been evaluated and accepted in the discourse of legal epistemology⁶².

⁶² *Ibid*

It can be argued that the matter of accountability and excusability in itself is not a feature of epistemology, because the function of epistemology is to explain what knowledge is and how it is acquired. As a result, it can be claimed that the function of legal epistemology is to seek the best possible method by which absolute knowledge of Sharī'a precepts can be acquired, and collaborating this with the matter of accountability and excusability can potentially distract a *mujtahid*. This is because rather than striving to acquire the best possible knowledge of Sharī'a precepts, he may be more drawn to acquiring Sharī'a precepts that merely guard him with immunity.

Indeed, during the formative period of its historical development, the fundamental debates within legal epistemology centered on proving whom from the Muslim tradition had access to true knowledge of Sharī'a precepts, and what evidence emanated such knowledge. However, following 'Allāma's acceptance of *ẓann* and the subsequent onslaught by the Akhbārī School, it appears that Shiite legal epistemology became defensive in its approach and as a result, the focus shifted from analysing evidence that brought about knowledge of Sharī'a precepts, to how a *mujtahid* could be granted with excusability and legal immunity from being punished. This supports Calder's claim that the main function of Shiite legal epistemology has been to maintain the juristic authority of a *mujtahid* over the *mukallaf* who imitates him, for if it is established that a *mujtahid* is granted with legal immunity then by priority those who imitate him are also granted with legal immunity.

Nevertheless, irrespective of this, Muḏaffar in his prelude of *mabāḥith al-ḥujja*, correctly proclaims that legal epistemology is indeed the most important part of legal theory, as it discusses the epistemic validity of the orthodox hermeneutical methods of textual interpretation that are discussed in the first part, **and** the epistemic validity of the rational precepts that are discussed in the second part. By using a logical syllogistic framework of reasoning, whereby a conclusion is inferred from a major premise (*kubrā*) and a minor premise (*ṣuḡhrā*), Muḏaffar highlights that the discourse on legal epistemology provides the major premise upon which the minor premises from the first two parts are assessed. As a result, this makes it possible to arrive at a conclusion that in effect establishes a Sharī‘a precept. For example:

Minor premise: The grammatical form of *‘ifal* linguistically signifies a command, which is apparent in indicating an obligation (*wujūb*)

Major Premise: Every apparent indication (*ẓāhir*) is epistemologically valid (*ḥujja*)

Conclusion: The grammatical form of *‘ifal* is epistemologically valid in indicating upon an obligation

As illustrated in this example, the minor premise is composed of the juristic deliberations that have been obtained from the analysis in the first part of Muḏaffar's legal theory, whereas the major premise is composed of the juristic deliberations that have been obtained from the analysis in the third part of Muḏaffar's legal theory. As a result, the conclusion that is obtained establishes the epistemic validity of a specific hermeneutical method, which can be used by a *mujtahid* in the derivation of Sharī'a precepts. Accordingly, if and when a *mujtahid* comes across the grammatical form of *'ifal* from the textual evidence that reveals knowledge of Sharī'a precepts, then he necessarily derives a legal precept that denotes an obligation.

It should be noted that an identical relationship exists between the second and third part of Muḏaffar's legal theory i.e. the minor premise is composed of the jurist's deliberations that have been obtained from the analysis in the second part of Muḏaffar's legal theory, whereas the major premise is composed of the juristic deliberations that have been obtained from the analysis in the third part. As a result, the conclusion that is obtained establishes the epistemic validity of specific rational precepts, such as the independent rational precept that justice is obligatory, or the dependent rational precept that it is obligatory to perform all the rational prerequisites of an obligation.

Therefore, Muḏaffar's prelude situates the specific discourse of legal epistemology in relation to the general discourse of legal theory. He categorically establishes that all other juristic deliberations discussed in legal

theory are contingent upon the “discussion of authority”, for as illustrated above, it is this discourse which either affirms or denies the epistemic validity of the evidence used in the juristic process of deriving Shari‘a precepts.

1.2 The Subject Matter of Legal Epistemology

A common trend found within the traditional texts of different disciplines studied at Shiite religious seminaries is that they all discuss the subject matter (*mawḍū‘*) of a discipline and distinguish it from other disciplines through the distinction of its subject matter⁶³. Accordingly, the subject matter of every discipline is an expression of what exactly is studied within it, and indeed when there is a subject there necessarily follows a predicate (*maḥmūl*), which in turn somewhat defines the subject. The predicate in the discipline of Shiite legal epistemology is clearly the evaluation of what is deemed as epistemologically valid (*ḥujja*). Thus, if the predicate is centred on the evaluation “what is deemed as epistemologically valid”, then the predicated term, or the subject matter, of such an evaluation is necessarily the “evidence,” or “*dalīl*,” which has the essential properties of being worthy of such an evaluation⁶⁴. In other words, the subject matter of Shiite legal epistemology is

⁶³ For Muzaḥḥar’s further discussion on the meaning and the function of the subject matter (*mawḍū‘*) and the role it plays in a particular discipline in his discourse of logic, see Muzaḥḥar, al-Shaykh Muḥammad Riḍā, *al-Manṭiq* (Beirut: Dār al-Ta‘arīf al-Maṭbū‘āt, 2006) pp. 347-355

⁶⁴ An example to clarify this would be that we commonly find that the Uṣūlīs conclude “the Qur’ān is a source of authority in the juristic process of deriving law.” In this case, the “Qur’ān” is the subject matter that is the evidence, whereas the sentence “authority in the process of deriving law” is the predicate. See Muzaḥḥar, *Uṣūl al-fiqh* vol. 2, p. 9

evidence, whereas the predicate is the epistemic evaluation of their evidentiary validity (*dalāla*).

However, one of the most debated issues in Shiite legal theory surrounds the identification of the exact subject matter of legal epistemology, as there appears to be confusion within the Uṣūlī jurisprudential literature regarding what evidence has the essential properties of being worthy of epistemic evaluation. It can be argued that the intensity of this debate was infused by Astarābādī, when the Akhbārī School heavily critiqued the four-fold categorisation of evidence that was initially proposed by ‘Allāma. As discussed above, the Akhbārīs upheld that the subject matter of legal epistemology was restricted to the evaluation of evidence that revealed absolute knowledge and certainty.

Nonetheless, following the post-Bihbihānī/Anṣārī resurgence of the Uṣūlī camp, valid evidence that produced conjecture of Sharī‘a precepts was once again accepted within the bounds of Shiite jurisprudence. However, despite this it is found that Muṣaffar extensively discusses the subject matter of Shiite legal epistemology, and this is undoubtedly because many of his Uṣūlī predecessors continued to dispute what evidence was worthy of being evaluated in the discourse of legal epistemology. Muṣaffar points out that numerous Uṣūlīs have insisted on restricting the subject matter of legal epistemology to the evaluation of *al-uṣūl al-arba‘a*, i.e. the four-fold

categorisation of evidence, which includes the Qur'ān, *sunna*, *ijmā'* and *'aql*.

However, Muḏaffar defines the subject matter as:

Everything that fits, or is potentially competent, in establishing a legal precept is deemed as an evidence, and is valid in [deriving] it [i.e. the Sharī'a precept]. Indeed, if in this [third] part we are able to establish with, certainty (*dalīl al-qaṭ'i*), that an evidence, is for instance, valid then we [are required to] take from it and refer to it to establish the precepts of Sharī'a⁶⁵.

When compared to the orthodox Uṣūlī position, it can clearly be seen from Muḏaffar's statement that his approach in legal epistemology is very much progressive, as he upholds that the subject matter of Shiite legal epistemology encapsulates a wide range of evidence. Thus, in accordance with Muḏaffar, every source or hermeneutical method that can **potentially** disclose a Sharī'a precept is worthy of being evaluated in Shiite legal epistemology⁶⁶. Muḏaffar does however clarify that such evidence can only actually be used in the juristic process of derivation when its epistemological validity is established with *qaṭ'* (certainty). If the epistemic validity of an evidence is not established with certainty, then it cannot be used by a *mujtahid*.

⁶⁵ *Ibid.*

⁶⁶ It should be noted that Muḏaffar also maintains the same stance in his overall introduction to legal theory, where he categorically points out that there is no specific subject matter for the discipline of legal theory. Rather, he claims that its subject matter is diverse, as it includes the examination of everything that enables a *mujtahid* to extrapolate Sharī'a precepts. See Muḏaffar, *Uṣūl al-Fiqh* vol. 1, pp. 6-7

Thus according to Muḏaffar, not only does the commonly accepted four-fold categorisation of evidence form part of the subject matter of legal epistemology, but more contentious evidence such as *qiyās* (analogy) and *ra'y* (personal opinion) are also included. Muḏaffar elaborates on his understanding by providing a philosophical analysis, whereby using philosophical jargons he argues that the subject matter of Shiite legal epistemology is the evaluation of “evidence per se” (*dalīl bi-mā hiya hiya*)⁶⁷, as opposed to “evidence as evidence” or evidence that is pre-assumed as being epistemologically valid (*dalīl bi-mā huwa dalīl*).

Muḏaffar categorically attributes the latter position to Abū Qāsim al-Qummī (d. 1232/1817), who is held as being the first Shiite *mujtahid* to analytically categorise the subject matter of legal epistemology as *dalīl bi-mā huwa dalīl*⁶⁸. In his *Qawānīn al-uṣūl*, Qummī suggests that the subject matter of legal epistemology is confined to the examination of evidence that is pre-assumed to be epistemologically valid, and accordingly he claims that the only evidence worthy of being evaluated is the four-fold categorisation of evidence, i.e. the Qur'ān, *sunna*, *ijmā'* and *aql*⁶⁹.

⁶⁷ Another translation for “*dalīl bi-mā hiya hiya*” is “evidence qua evidence.” Muḏaffar also notes that another Arabic term used to denote *dalīl bi-mā hiya hiya* is “*dhāt al-dalīl*”, which can be literally translated as “the essence of evidence.” Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 9

⁶⁸ *Ibid*, p. 10

⁶⁹ See al-Qummī, Mīrzā Abī Qāsim, *al-Qawānīn al-ḥukama fī-l uṣūl* 2 vols. (Beirut Dār al-Murtaḏā, 2009) vol. 1, pp. 47-48

Qummī's position is criticised by Muḥammad Ḥusayn Iṣfahānī al-Ḥāirī (d.1261/1845) in his *Fuṣūl fil-uṣūl*, where he correctly assesses that by claiming that the subject matter of legal epistemology is *dalīl bi-mā huwa dalīl*, the likes of al-Qummī treat the epistemic validity of evidence as a basic presumption (*mabādī al-taṣawwuriyya*)⁷⁰. In logic, a basic presumption is described as a proposition that is pre-supposed, or is taken for granted, in one discipline because it is an issue (*masā'il*) that is analysed in another discipline. For instance, a simpler example of a proposition that is presupposed in the discipline of Shiite legal theory is the legitimacy and authority of the *ma'ṣūm* as the appointed representatives of the Divine Lawgiver. This proposition is not a jurisprudential issue, rather it is a theological one, and thus is discussed and extensively analysed in the discipline of Shiite theology. As such, although this proposition also has relevance to the Shiite jurisprudential discourse, it is only discussed here in a supplementary manner, and many of the significant discussions pertaining to it are taken as basic presumptions.

Therefore, with the aid of analytical jargon, Ḥāirī expounds that Qummī, alongside other Uṣūlī *mujtahids* who similarly restrict the subject matter of Shiite legal theory to the evaluation of *dalīl bi-mā huwa dalīl*, are in fact pre-assuming and accepting the epistemic validity of **set** evidence prior to evaluating it within the discourse of legal epistemology. In essence, it can be affirmed that for the likes of Qummī, a complete discussion on the epistemic

⁷⁰ Ḥāirī's view is elucidated by Muzaḥfar himself, see Muzaḥfar, *Uṣūl al-fiqh* vol. 2, pp.10-11

validity of evidence is an area that is outside the scope of legal epistemology or legal theory.

As an alternative, al-Ḥāirī proposes that the subject matter of legal epistemology is the evaluation of *dalīl bi-mā huwa dalīl*. He therefore concludes that it is inaccurate to pre-assume the epistemic validity of evidence prior to evaluating the potential evidence within legal epistemology, as the sole purpose of this discourse is to provide the correct forum for evaluating evidence *per se*⁷¹. However, it is important to note that Muḥaffar criticises Ḥāirī for failing to evaluate the epistemic validity of a broader range of sources, as he too – similar to those he has critiqued - restricts the epistemic evaluation to the commonly accepted four-fold categorisation of evidence⁷².

Nevertheless, it can be asserted that Ḥāirī was one of the first Shiite *mujtahids* who argued, using analytical philosophical jargoning, that the subject matter of the discourse of legal epistemology is *dalīl bi-mā hiya hiya*. Undoubtedly, his analysis impressed many of the post-Anṣārī Uṣūlī *mujtahids*, including Muḥaffar. Indeed, it is found that following his extensive introduction to legal epistemology, Muḥaffar moves on to individually evaluate the epistemic validity of not only the commonly accepted four-fold categorisation of evidence, but also *qiyās*, which is indeed a key evidence whose epistemic

⁷¹ *Ibid*, p.11

⁷² *Ibid*.

validity has historically been severely opposed in the Shiite jurisprudential tradition.

In essence, it becomes apparent that the subject matter of legal epistemology has evolved with time within the historical discourse of Shiite legal theory. A great number of contemporary Uṣūlīs are of the opinion that the subject matter of legal epistemology is the study of evidence per se or evidence qua evidence⁷³. As a result, it can be affirmed that they uphold that it is, at the very least, possible to incorporate the evaluation of a wider range of evidence within the discourse of Shiite legal epistemology. Therefore, apart from the accepted traditional four-fold categorisation of evidence, and the traditional evidence such as *qiyās*, *istiḥsān* (juristic preference), *maṣlaḥa* (public interest) etc. that have been rejected in the Shiite jurisprudential discourse, contemporary Uṣūlī epistemology can theoretically assent to the epistemic evaluation of modern evidence, such as sociological findings, political findings, economic findings etc. Indeed, it must be reemphasised that by accepting the epistemic evaluation of a wider range of evidence as the subject matter of legal epistemology, this does not automatically imply that they can be used in the juristic derivation of Sharīʿa precepts, as this is only permissible once their epistemic validity has been established. Accordingly, in light of the fact that contemporary Uṣūlī epistemology theoretically permits the epistemic evaluation of a wider range of evidence as its core subject matter, the remainder of this research will focus on

⁷³ Faḍlī notes that apart from Muẓaffar, other contemporary post-Anṣārī Uṣūlīs too agree that the subject matter of legal epistemology or legal theory is evidence qua evidence. See Faḍlī, *Durūs fī uṣūl al-fiqh al-Imāmiyya* vol. 1, pp. 111-112 and pp. 141-147

critically analysing the epistemological underpinnings maintained in contemporary Uṣūlī legal theory. In doing so, this research will explore whether contemporary Uṣūlī legal theory is able to legitimise the epistemic validity and the utility of a wider range of evidence in the juristic process of deriving Sharīʿa precepts.

1.3 The Meaning of Epistemic Validity (*Hujjiyya*)

In line with the fact that the subject matter of the contemporary discourse of Uṣūlī legal epistemology is to evaluate the epistemic validity of evidence qua evidence that can be used in the juristic derivation of Sharīʿa precepts, it is necessary to understand what is exactly meant by the concept of epistemic validity in legal epistemology. The Arabic term used to denote the concept of “epistemic validity” is “*hujjiyya*”⁷⁴, and when evidence is proven to be “epistemologically valid” it is termed as “*hujja*.” Although a corresponding synonym to the term *hujja* does not exist in the English language, it is found that the concept of *hujja* is not difficult to comprehend. This is largely attributable to Muḥaqqar’s detailed description of how the term *hujja*, and the concept of *hujjiyya*, is understood across inter-related Muslim disciplines.

⁷⁴ There is no exact English synonym for the term *hujjiyya*. However, it is usually translated as “authoritativeness”, see Hallaq, *A History of Islamic Legal Theories*, p. 126 or “probative force”. See Gleave, *Inevitable Doubt*, p. 31. Henceforth, it will be translated as “epistemic validity”.

Muẓaffar firstly explains the understanding of *ḥujjiyya* by explicating its lexical meaning. He clarifies that Al-Zāhirī, a tenth century CE Arabic lexicographer, defined that anything that is potentially competent in abnegating or arguing against another thing is termed as *ḥujja*⁷⁵. Muẓaffar elaborates on this definition by way of the following example; if two parties are involved in a dispute, then the party that possesses *ḥujja* – i.e. argument over another party – is always deemed to be victorious, as this party has *ḥujjiyya* – i.e. the ability to correctly argue. Moreover, Muẓaffar notes that the party that possesses *ḥujja* can be victorious over the party that does not possess *ḥujja* in one of two ways; firstly, by completely silencing or disproving the other party, or secondly, by being able to convince the other party of its point of view. Muẓaffar describes – without making it clear whether it is his opinion or the opinion of Zāhirī – that in either instance, the possessor of *ḥujja* is granted with excusability and thus cannot be held accountable⁷⁶. Therefore, it can be seen that there is a necessary correlation between the lexical meaning of *ḥujjiyya* and the notion of accountability and excusability.

Nonetheless, following his analysis of the lexical meaning of the term *ḥujja* and the concept of *ḥujjiyya*, Muẓaffar demonstrates its usage in the Muslim

⁷⁵ Muẓaffar does not provide a direct reference to al-Zāhirī. However, this reference is provided by Shaykh Ibrāhīm Ismāʿīl al-Shaharkānī in his commentary (*sharḥ*) of Muẓaffar's *Uṣūl al-Fiqh*. It should be noted that Al-Zāhirī is famously recognised as one of the early writers of the Arabic dictionary, *Lisān al-ʿArab*. See Shaharkānī, al-Shaykh Ibrāhīm Ismāʿīl. *al-Mufīd fī sharḥ uṣūl al-fiqh*, 2 vols. (Beirut: Muʾassasat al-Hidāya, 2003) vol. 2, p. 14

⁷⁶ See Muẓaffar, *Uṣūl al-fiqh* vol. 2, pp. 11-12

discourse of logic (*manṭiq*)⁷⁷. In accordance with the logicians, the term *ḥujja* is another expression that is used to describe logical reasoning and argumentation. It technically refers to a set of syllogistically constructed premises - the minor premise and the major premise - which bring about knowledge of something unknown from something known, irrespective of whether such knowledge is acquired through inductive argumentation or deductive argumentation. For instance, an example of a deductive argument, which can also be termed as *ḥujja*, is:

Minor premise: John is a human being

Major premise: Every human being is mortal

Conclusion: Therefore, John is mortal

Furthermore, the term *ḥujja* is also used by logicians to describe the common denominator, or the middle limit (*al-ḥad al-awsaṭ*), in syllogistic reasoning⁷⁸. The middle limit is something which is common to both the major and the minor premise, and thus can be described as the connecting factor between both premises in order to arrive at an argument or a conclusion. For instance, the middle limit in the aforementioned example is “human being,” as it is a common feature of both the major and the minor premise.

⁷⁷ *Ibid*, p. 12

⁷⁸ See Muṣaffar, *al-Manṭiq*, pp. 201-202 and pp. 209-210

Therefore, in essence, in the Muslim discourse of logic the term *ḥujja* is either referred to as a syllogistically constructed argument, or the middle limit which is consistent in both the major and minor premises of a syllogistically constructed argument. In both cases, *ḥujja*, or the concept of *ḥujjiyya*, is recognised as something which causes or discloses knowledge through syllogistic argumentation, irrespective of whether such knowledge is caused in cases of disputation or not. It becomes apparent from the logical definition of *ḥujja* that the notion of accountability and excusability is not mentioned. It is thus arguable that the discourse of logic, which by nature is very particular in defining things, does not include the aspect of accountability and excusability as being an integral part of the definition of *ḥujja*. In other words, unlike the lexical definition of *ḥujja*, the logical definition of *ḥujja* does not claim that the property of accountably and excusability forms part of the definition or the nature of *ḥujjiyya*.

Following its lexical and logical definitions, Muḏaffar moves on to explain how the term *ḥujja* and the concept of *ḥujjiyya*, is understood in the discourse of legal epistemology. He explains:

For the Uṣūlīs, the meaning of *ḥujja* [as it is] in accordance with their normal usage [refers to] “Everything that is competent in establishing its referent and does not reach the level of certainty (*qaṭʿ*).” Inasmuch as, the referent is not caused [or established] with certainty, because if

it is [established] with certainty, then [that] certainty is [in itself] *hujja*, but *hujja* in the literal sense⁷⁹.

This statement establishes that there are two key characteristics of the Uṣūlī definition of *hujja*. On one hand, the term *hujja* is described as something that establishes its referent. On the other hand, it is described as something that does not reach the level of *qaṭʿ* (epistemic certainty), as *qaṭʿ* in itself is deemed as *hujja*.

Therefore, it becomes apparent that in legal epistemology, there are two distinct usages of the term *hujja*. Firstly, the term *hujja* is referred to in its real (*ḥaqīqī*) sense, whereby it is used to describe something that gives rise to *qaṭʿ*. Although the epistemic validity of *qaṭʿ* is thoroughly analyzed in Chapter Three, it is vital to note at this juncture that in Shiite legal epistemology, *qaṭʿ* is undisputedly recognised to be *hujja* (epistemologically valid) in its literal sense. This is because by its very nature, *qaṭʿ* essentially establishes or discloses another thing, and thus it is naturally incumbent upon the person who attains *qaṭʿ* to follow it and act in accordance with its disclosure. Thus, for example, if in the juristic process of deriving Shariʿa precepts, a *mujtahid* is to come across *al-dalīl al-qaṭʿī* (certainty-bearing evidence) then the disclosure, or the evidentiary nature, of such evidence is essentially *hujja* or epistemologically valid in the literal sense, because the Uṣūlīs uphold that a

⁷⁹ See Muzaḥḥar, *Uṣūl al-fiqh* vol. 2, p.12

certainty-bearing evidence by its very essence discloses the Sharīʿa precept and makes it naturally incumbent upon the *mujtahid* to follow its disclosure.

Secondly, the term *hujja* is more widely referred to in its metaphorical (*majāzī*) sense or the technical Uṣūlī sense, whereby it is ascribed to something that does not give rise to *qaṭʿ*, but instead gives rise to *ẓann* (conjecture) that is substantiated. In other words, it refers to evidence that is not essentially *hujja* or epistemologically valid in the literal sense, but nevertheless discloses conjectural knowledge of Sharīʿa precepts. In accordance with the post-Anṣārī Uṣūlī thought, the epistemic validity of such evidence is postulated, or prescribed, by the Divine Lawgiver, who Himself deems such evidence as “*hujja*”⁸⁰. Thus, for example if in the juristic process of deriving Sharīʿa precepts, a *mujtahid* is to come across prescribed evidence, then he is required to abide by its indication or disclosure, because it has been postulated, or more accurately, substantiated, by the Divine Lawgiver Himself, and thus discloses knowledge of Sharīʿa precepts.

Therefore, the contemporary discourse of Shiite legal epistemology has two usages of the term *hujja*. On one hand, the concept of *hujjiyya* refers to the epistemological validity of certainty-bearing evidence, whilst on the other hand, it refers to the epistemological validity of substantiated evidence.

⁸⁰ The evidence that is substantiated by the Divine Lawgiver Himself is further explained in detail in Chapter Four.

The definition of *ḥujjiyya* is of pivotal importance, for by determining what is meant by epistemic validity naturally enables the evaluation of what evidence is epistemologically valid in the derivation of Sharīʿa precepts. As shown, the Shiite tradition has historically understood the concept of *ḥujjiyya* in different ways. During the formative period, the concept of *ḥujjiyya* was restricted only to evidence that gave certainty or absolute knowledge of Sharīʿa precepts. This understanding was then modified within the Shiite jurisprudential discourse after ʿAllāma’s introduction of *ẓann*, wherein it broadened the definition of the concept of *ḥujjiyya* to not only include certainty-bearing (*qaṭʿī*) evidence, but also conjectural (*ẓannī*) evidence that disclosed Sharīʿa precepts. However, this definition was once again further transformed following the works of the Akhbārīs, who maintained that knowledge of Sharīʿa precepts could predominantly only be derived from the reports of the *maʿṣūm*, as in accordance with their understanding, these reports were the only epistemologically valid (*ḥujja*) evidence that gave knowledge of Sharīʿa precepts.

Due to the constant change of the exact meaning of *ḥujjiyya*, Muṣaffar deemed it necessary to discuss both its lexical and logical definitions. The two definitions emphasise the validity of Muṣaffar’s epistemological underpinnings, as they establish that something that is recognised as *ḥujja* does not necessarily have to give certain knowledge of Sharīʿa precepts, but rather may establish a correct method of argumentation. As a result, this strengthens the contemporary Uṣūlī position in justifying that Sharīʿa precepts cannot only be derived from *qaṭʿī* evidence, but can also be derived from *ẓannī* evidence

that has been substantiated by the Divine Lawgiver, so long as this evidence provides the correct method of argumentation. This once again highlights that the contemporary Uṣūlī discourse of legal epistemology is not only preoccupied with how it is possible to acquire knowledge of Sharīʿa precepts from the best possible means, but also focuses on how a *mujtahid* is granted with excusability and not held accountable and subjected to chastisement for deriving Sharīʿa precepts that are in fact contrary to the objective reality.

Nonetheless, Muḥaffar notes that in the Shiite discourse of legal theory, the technical meaning of *ḥujja* is also referred to as “*imāra*,” “*ṭarīq*,” and “*dalīl*.” In the technical sense, all these terms refer to any substantiated evidence that produces conjectural knowledge of Sharīʿa precepts⁸¹. As established, in the post-Anṣārī Uṣūlī discourse, substantiated evidence is deemed as epistemologically valid because it is recognised as being prescribed or substantiated by the Divine Lawgiver Himself. Thus, the conjecture it produces is especial conjecture (*ẓann al-khāṣ*), insofar as although there is a possibility of being misled by its evidentiary nature, a *mujtahid* is always granted with legal immunity. Therefore, if a *mujtahid* is to derive Sharīʿa precepts based on the indication of substantiated evidence, then he is not held accountable if its indication leads him to err and overlook the precept that is in the objective reality. Conversely, if a *mujtahid* does not abide by the indication of the substantiated evidence, and as a result errs in his derivation of a Sharīʿa precept and overlooks that which is in the objective reality, then he can be held

⁸¹ See Muḥaffar, *Uṣūl al-Fiqh* vol. 2, p. 13

accountable and also subjected to chastisement. Therefore, in accordance with the former, the *mujtahid* possesses the “*hujja*” that prevents him from being punished, whereas in accordance with the latter, God possesses the “*hujja*” to justify chastisement. In essence, although the likes of Muḏaffar who belong to the contemporary Uṣūlī School, significantly broaden the subject matter of legal epistemology to include a wider range of evidence that can potentially disclose Sharī‘a precepts, in practice they restrict the actual derivation of Sharī‘a precepts to evidence that is deemed as *hujja*, inasmuch as it not only discloses knowledge of Sharī‘a precepts, but also grant *mujtahids* with excusability.

1.4 The Evidentiary Nature of Substantiated Evidence

Following his clarification of the Uṣūlī technical usage of the term *hujja* being synonymous with the aforementioned terms that can collectively be translated as “substantiated evidence,” Muḏaffar moves on to discuss the evidentiary nature of substantiated evidence. Indeed, substantiated evidence plays a pivotal role in the derivation of Sharī‘a precepts, and thus a detailed examination of its evidentiary nature and concept is of paramount importance in legal epistemology. This is further heightened by the fact that the understanding of substantiated evidence has been greatly disputed, and at times even caused confusion, within the discourse of Shiite legal epistemology. Accordingly, through a systematic analysis, Muḏaffar firstly clarifies the difference between

conjecture itself (*ẓann*) and conjecture produced from substantiated evidence (*al-ẓann al-mu'tabar*). Secondly, Muẓaffar clarifies that one of the most essential properties of substantiated evidence is its ability to create generic conjecture (*ẓann al-nu'wī*) as opposed to individual conjecture (*ẓann al-shakṣī*). Finally, he distinguishes between the evidentiary nature of substantiated evidence and the practical principles (*uṣūl al-'amaliyya*).

1.4.1 The Difference Between Substantiated Conjecture and Conjecture Per Se

Muẓaffar cites that one of the major confusions found in the discourse of Shiite legal theory relates to the slack tendency of some Uṣūlī *mujtahids* to loosely use the term substantiated evidence synonymously with *ẓann*. He clarifies that by the term *ẓann*, these *mujtahids* do not refer to conjecture per se, but rather they refer to *al-ẓann al-mu'tabar*⁸². In legal epistemology, the term *ẓann al-mu'tabar* (literally: substantiated conjecture) is used synonymously with the term *ẓann al-khāṣ* (especial conjecture), and both these terms refer to conjecture that is produced from evidence that has been substantiated, or prescribed, as epistemologically valid by the Divine Lawgiver Himself. As a result, this type of conjecture can be used in the juristic process of deriving Sharī'a precepts, as it is not the same as *ẓann* in its conventional meaning, which is conjecture per se.

⁸² *Ibid.*

Moreover, Muḏaffar also condemns *mujtahids* who have demonstrated a tendency of using the term “substantiated evidence” (whether it is as “*imāra*,” “*ṭarīq*,” or “*dalīl*”) synonymously with the term *ẓann al-mu’tabar*. Using a semantic argument, Muḏaffar accurately emphasises that in the discourse of legal epistemology, the term “substantiated evidence” has not been postulated to indicate conjecture in itself, but rather refers to substantiated evidence that has the ability to **produce** conjecture. Thus, it is only correct to claim that substantiated evidence is a source of *al-ẓann al-mu’tabar* as opposed to being synonymous with it.

It is noted that Muḏaffar highlights a clear distinction between *ẓann* and *al-ẓann al-mu’tabar*, because the outcome of *ẓann*, or conjecture per se, has always been opposed in the Shiite jurisprudential discourse, particularly by the Akhbārī School. However, by maintaining the epistemological validity of substantiated conjecture and denying the epistemological validity of conjecture per se, Muḏaffar establishes that his understanding of legal epistemology is widely in sync with the Shiite jurisprudential tradition. In other words, in line with the post-Anṣārī thought, Muḏaffar clarifies from the outset that Sharī’a precepts cannot be derived from evidence that solely gives rise to conjecture per se. Rather, alongside other contemporary post-Anṣārī Uṣūlīs, he claims that Sharī’a precepts can only be derived from that which is *ḥujja*, i.e. evidence that produces *ẓann al-mu’tabar*. Therefore, this illustrates that according to the contemporary Uṣūlī thought, the conjecture that is produced from a wide range

of evidence that can potentially reveal knowledge of Sharī‘a precepts is in fact invalid, unless it has been substantiated by the Divine Lawgiver Himself as especial conjecture (*ẓann al-khāṣ*) that can be used in the juristic derivation of Sharī‘a precepts.

1.4.2 The Necessity of Producing Generic Conjecture

The knowledge of Sharī‘a precepts that is disclosed from potential evidence can either lead to generic conjecture (*ẓann al-nu‘wī*) or individual conjecture (*ẓann al-shakṣī*). The former arises when potential evidence produces conjectural knowledge of Sharī‘a precepts in the minds of a majority of human beings, whilst the latter arises when potential evidence produces conjectural knowledge of Sharī‘a precepts in the minds of a minority of human beings, or particular individuals. Accordingly, Muẓaffar points out that evidence is only correctly deemed as epistemologically valid (*hujja*), or as “substantiated evidence”, if and when it is able to produce generic conjecture of Sharī‘a precepts. In contrast, if the evidence fails to produce generic conjecture, and instead only produces individual conjecture, then it cannot be held as epistemologically valid, or as “substantiated evidence”⁸³. In essence, evidence is only recognised as being prescribed by the Divine Lawgiver if it is able to

⁸³ *Ibid*, p.14

produce knowledge of Sharī'a precepts in the minds of a majority of human beings.

It is evident that Muḏaffar bases this claim on a particular conception of rational knowledge, which states that in order to validate some kind of rational reasoning, the usual criterion used by a rational agent is to distinguish whether such reasoning can potentially produce conjecture in the minds of a majority of people in normal circumstances or not. If it is able to produce conjecture in the minds of a majority of people, then undoubtedly such reasoning is valid. In the same way, owing to the 'Adliyya theological thought, in Shiite jurisprudential discourse, the Divine Lawgiver is assumed to be a rational agent, and indeed is considered as the Chief of all rational agents (*ra'is al-'uqalā*), as He is Omniscient (*'ālim*). As a result, He too uses the same rationalist criterion for substantiating evidence. In other words, the Divine Lawgiver only prescribes those evidence that He knows have the ability to produce generic conjecture.

Muḏaffar further elaborates on what is meant by generic conjecture by highlighting that the epistemic validity of a substantiated evidence is never affected or diminished if it fails to give rise to conjecture in the minds of **all** human beings. For example, if in a particular case, certain individuals are found to disagree with the indication of a particular substantiated evidence, then this does not in any way restrict its epistemic validity. Instead, it is epistemologically valid even upon such individuals, as it is not only something that the Divine Lawgiver has substantiated as an accepted method (*ṭarīq*) that

leads to knowledge of the objective reality, but also because its disclosure has been accepted by a majority of human beings⁸⁴.

A common example that is usually given in the contemporary Uṣūlī discourse of Shiite legal epistemology is that of an isolated report (*khabar al-wāḥid*). An isolated report – if and when it is established as being transmitted by a chain of trustworthy narrators – is recognised by post-Anṣārī *mujtahids* as substantiated evidence, whose evidentiary nature is prescribed by the Divine Lawgiver Himself. The reason for this is because the Omniscient Divine Lawgiver identifies that an isolated report has the ability to produce universal conjectural knowledge. Accordingly, if a *mujtahid* follows and acts in accordance with its disclosure, then he is granted with legal immunity, whereas if he refrains from following and acting in accordance with it, and as a result fails to derive that which is in the objective reality, then he can be held accountable and subject to chastisement.

In essence, even if one is to remain sceptical regarding the universal indication of substantiated evidence, he or she has no choice but to follow or act in accordance with its generic indication. It can be argued that Muṣaffar has strongly upheld the epistemic validity of generic conjecture over individual conjecture, because by abiding with evidence that produces generic conjecture, the possibility of *ikthilāf* (differences) arising within Shiite jurisprudential

⁸⁴ *Ibid.*

circles is prevented. It is important to note that the issue of *ikhtilāf* was a serious concern during the formative period of Shiite jurisprudence⁸⁵, as a uniform set of epistemic criteria for evaluating evidence did not exist. As a result, in order to curtail *ikhtilāf*, Shiite legal theory was forced to prove the epistemic validity of certain evidence by evaluating their ability in producing universal conjecture. In other words, if Shiite legal epistemology supposedly permitted the derivation of Sharī'a precepts based on individual conjecture, then this could possibly lead to major legal schisms within the Shiite community, and effectively also significantly impact upon the authority of the *mujtahid*. Consequently, in order to prevent this from occurring, contemporary Uṣūlī epistemology deems it necessary to only accept the epistemic validity of evidence that has the ability to produce generic conjecture.

1.4.3 The Difference Between Substantiated Evidence and Procedural Principles

The discourse on procedural principles (*uṣūl al-'amaliyya*) within Shiite jurisprudence was significantly developed by Anṣārī, who suggested that it was not only possible to derive knowledge of Sharī'a precepts by referring to the Uṣūlī typology of *qaṭ'* and *ẓann*, but that such knowledge could also be

⁸⁵ Tūsī was the first Shiite jurist to admit a lot of *ikhtilāf* existed within the juristic circles of Shiite Islam. See Calder, "Doubt and Prerogative," p. 63

attained in cases of *shakk* (doubt)⁸⁶. Accordingly, procedural principles have been applied in the juristic process of deriving Sharī'a precepts in situations where there is doubt about the level of certainty surrounding a Sharī'a precept, or indeed when a Sharī'a precept is entirely unknown, due to there being a lack of either certainty-bearing evidence or specifically substantiated evidence that discloses the Sharī'a precept. In such cases, a *mukallaf* - or a *mujtahid* - is required to adopt a practical stance, which consequently leads to the application of procedural principles. For instance, on the issue of smoking, Ṣadr states:

Let us take as our point of departure the probability that it [smoking] is forbidden by the Sharī'a. We [the *mujtahid*] first endeavor to find evidence for a *shar'i* ruling on the issue of smoking, and when we are unable to do so, we ask ourselves about the practical stance to be adopted towards the unknown – and unknowable - ruling. Is it incumbent upon us to observe caution (*iḥtiyāt*) in the matter? This is a basic question the jurist now has to answer, and he attempts to do so by having recourse to the practical procedure (*al-uṣūl al-'amaliyya*)⁸⁷.

This clearly illustrates that since there is no disclosure of a Sharī'a precept from either certainty-bearing evidence or substantiated evidence regarding the issue of smoking, a *mujtahid* is necessarily required to take a practical stance

⁸⁶ For the complete discussion of Anṣārī, see Anṣārī, *Farāi'd al-uṣūl*, pp. 308-402

⁸⁷ Ṣadr, *Principles of Islamic Jurisprudence*, p. 112; also see Ṣadr, *Durūs* vol. 1, p. 129

by applying the procedural principles. It is important to note that the procedural principles that are commonly discussed in Shiite legal theory include:

1. The principle of caution (*aṣālat al-iḥtiyāt*), which is a principle that is applied in cases where the *mukallaf* only has ambiguous knowledge (*al-ilm al-ijmālī*) of a Sharī'a precept. In such cases, the *mukallaf* is required to fulfill or carry out the maximum duties required. An example of this would be where a *mukallaf* has two cups in front of him, and possesses knowledge that one of the two cups is contaminated with a substance that is prohibited by the Divine Lawgiver, but does not have the exact knowledge of which one of the two cups is contaminated i.e. the *mukallaf* only has ambiguous knowledge. In this case, the principle of caution would suggest that the *mukallaf* is required to remain cautious and consequently abstain from drinking from any of the two cups. In this way, the *mukallaf* has carried out the maximum duty required, and is immune from being held accountable for doing that which is prohibited.
2. The principle of exemption (*aṣālat al-barā'a*), which is a principle that is usually applied in cases where a *mukallaf* has an initial or basic doubt (*shakk al-badawī*) about a Sharī'a precept. In such cases, a *mukallaf* is not required to perform any duty towards the Divine Lawgiver; rather he is exempt from performing any duties. For instance, a Sharī'a precept does not exist with regards to the issue of smoking, as there is not any certainty-bearing evidence or substantiated evidence available

that upholds its legal status. Therefore, a *mukallaf* has basic doubt on what the opinion of the Divine Lawgiver on the issue of smoking is, and in such a case, a *mukallaf* is required to abide by a general rule, which declares that everything is permissible until it is proven impermissible⁸⁸. By abiding by this general rule, a *mukallaf* knows that he has no duty towards the Divine Lawgiver, and consequently cannot be held accountable even if he is to act against that which is in the reality.

3. The principle of continuity (*aṣālat al-istiḥāb*) is a principle that is usually applied in cases where a *mukallaf* starts doubting something that he previously knew with certainty (*qaṭʿ*). In such a case, the practical stance a *mukallaf* takes in order to resolve the doubt is to abide by, or act in accordance with, his previous certainty. It should be noted that the rational justification normally given in Shiite legal theory to substantiate the principle of continuity is that doubt can never overpower certainty. This is because certainty is always epistemologically superior to doubt. An example of where the principle of continuity is applicable is in the situation where a *mukallaf* has doubt about his state of ritual ablution (*wuḍūʿ*), knowing the fact - with

⁸⁸ It is found that the Uṣūlīs have argued for this position by using both textual and non-textual evidence. The non-textual evidence will be detailed in Chapter Two. Regarding the textual evidence, the Uṣūlīs normally point towards the Qurʾān 17:15 “and never would We punish until We sent a messenger.” In addition, the Uṣūlīs also quote the well-known reported tradition of the Prophet, which says “My community is not held responsible for what it does not know.” See *ibid*, p. 129; Faḍlī, *Durūs uṣūl fiqh al-Imāmiyya* vol. 2, p. 515

certainty - that he previously did perform the ritual ablution. In this case, the principle of continuity would suggest that the *mukallaf* is required to follow his previous certainty, and consequently assume that he is in the state of ritual ablution. In other words, after acting in accordance with the principle of continuity, even if the *mukallaf* is not in a state of ritual ablution, he cannot be held accountable, as he has acted in accordance with his certainty rather than his doubt.

4. The principle of option (*aṣālat al-takhīr*), which is a principle that is usually applied in cases where a *mukallaf* has doubt about two conflicting Sharī'a precepts. In such a case, the practical stance a *mukallaf* takes is to choose one of the two conflicting Sharī'a precepts, and this principle is only actively applied in cases where he is unable to apply any of the aforementioned principles of caution, exemption, and continuity. An example would be in the case where there are two equally substantiated evidence that indicate on two conflicting Sharī'a precepts, inasmuch as one evidence suggests that it is obligatory (*wājib*) to perform a particular action, whilst the other evidence suggests that it is prohibited (*ḥarām*) to perform that particular action. In such a situation, a *mukallaf* is in doubt about which indication he is required to follow, however he knows that he has to follow one of the two conflicting evidence, for if the act is obligatory in the objective reality, then it is forbidden to avoid it, and if it is prohibited in the objective reality, then it is obligatory not to perform it. Therefore, a *mukallaf*

cannot ignore both the evidence, nor can he abide by the indication of both the evidence simultaneously, and consequently he is faced with the decision of choosing one evidence. In such a case, even if the *mukallaf* was to choose a Sharīʿa precept which in actual fact is conflicting with that which is in the objective reality, he cannot be held accountable, as he has no choice but to follow one of the two conflicting evidence that have been substantiated by the Divine Lawgiver Himself⁸⁹.

It is apparent that the key difference existing between the evidentiary nature of procedural principles and the evidentiary nature of substantiated evidence is that a *mujtahid* only resorts to using or acting in accordance with procedural principles in cases where he is unable to derive Sharīʿa precepts from the substantiated evidence. In light of this, it can be affirmed that the juristic process of legal reasoning in post-Anṣārī jurisprudential discourse consists of two stages - in the first stage, a *mujtahid* exerts the maximum effort to derive Sharīʿa precepts through utilising the substantiated evidence. However, if he is unable to attain sufficient indication of Sharīʿa precepts from the substantiated evidence, then he progresses to the second stage, whereby he resorts to applying the procedural principles. Accordingly, Muḥaffar points out that:

⁸⁹ It is vital to note that although Muḥaffar claims that there is a four-fold categorisation of procedural principles, in his *Uṣūl al-fiqh* he only critically discusses the procedural principle of *istiṣhāb* (continuity), see Muḥaffar, *Uṣūl al-fiqh* vol. 2, pp. 231-288. The reason for this is because Muḥaffar wrote his treatises of legal theory during the last part of his life, and due to this he was not permitted with time to complete his work, see *ibid*, p. 230. Nonetheless, for a detailed study of the four-fold categorisation of procedural principles in the contemporary Uṣūlī thought, see Faḍlī, *Durūs uṣūl fiqh al-Imāmiyya* vol. 2, pp. 463-531

The term *imāra* [or substantiated evidence] does not include *uṣūl al-‘amaliyya* (procedural principles), such as [the principles of] exemption, caution, option and continuity. Rather the procedural principles are on one side and the *imāra* are on the opposite side. Indeed, a *mukallaḥ* only resorts to the [procedural] principles if the *imāra* is missing, or in other words if he [the *mukallaḥ*] is unable to establish for himself a *ḥujja* [which indicates] on the ruling of the Sharī‘a as it is in the objective reality (*wāqi‘ī*)⁹⁰.

This statement clearly discloses that according to Muḥaḥḥar, the *imāra* (substantiated evidence) categorically differs to the *uṣūl al-‘amaliyya* (practical principles). In essence, the procedural principles are only used in the juristic process of deriving Sharī‘a precepts when a *mukallaḥ*, or more specifically a *mujtahid*, is unable to obtain *ḥujja*. It is important to understand that by *ḥujja*, Muḥaḥḥar refers to the technical Uṣūlī sense of *ḥujja*. This is clarified by the fact that the Shiite jurisprudential discourse categorises juristic derivations of Sharī‘a precepts into two types - real Sharī‘a precepts (*al-ḥukm al-wāqi‘ī*) and apparent Sharī‘a precepts (*al-ḥukm al-ẓāhirī*).

The *ḥukm al-wāqi‘ī* is recognised as the “real” Sharī‘a precept because it is derived using substantiated evidence. As discussed earlier, substantiated evidence is recognised as *ḥujja* because it has the ability to potentially disclose

⁹⁰ Muḥaḥḥar, *Uṣūl al-fiqh* vol. 2, pp. 14-15

knowledge of the objective reality. Meanwhile, the *ḥukm al-zāhirī* is recognised as the “apparent” Sharī‘a precepts because it is derived using the procedural principles. The procedural principles are not recognised as *ḥujja* in the technical Uṣūlī sense, because they do not have the ability to potentially disclose knowledge of the reality; rather they are only able to determine an apparent precept, or a practical standpoint, in cases where the “real precept” is not found⁹¹. It is vital to note that this does not however imply that the procedural principles are not epistemologically valid (*ḥujja*), as epistemic validity is attributed to them in the literal sense of *ḥujja*, inasmuch as procedural principles by their very nature have the ability to grant a *mujtahid* with legal immunity. In essence, if a *mujtahid* is to derive an apparent Sharī‘a precept by using the procedural principles, then he is granted with excusability and cannot be held accountable or subjected to chastisement, even if his derived Sharī‘a precept is in contradiction to that which is in the objective reality.

Muḥaffar also notes that there exist some differences within the Uṣūlī camp regarding the evidentiary nature of the principle of continuity (*istiṣḥāb*). Some Uṣūlīs have claimed it to be akin to substantiated evidence as opposed to being a procedural principle⁹². The reason for this is because they maintain that the application of the principle of continuity only becomes active when a *mukallaf* has doubt over something that he previously knew with certainty.

⁹¹ For a detailed discussion on the *ḥukm al-wāqī‘ī* and *ḥukm al-zāhirī* see Muḥaffar, *Uṣūl al-fiqh* vol. 1, pp. 5-6; Faḍlī, *Mabādī al-uṣūl*, pp.8-9; Ṣadr, *Durūs* 3 vol. 2, pp. 15-17

⁹² Muḥaffar, *Uṣūl al-fiqh* vol. 2, p. 15

Consequently, certain *mujtahids* have concluded that this previous certainty is equivalent to substantiated evidence, because like substantiated evidence, the previous certainty has the ability to create conjecture (*ẓann*) in the mind of the *mukallaf* with regards to his current state. For example, if a *mukallaf* is certain that he has performed ritual ablution in the morning, but by the afternoon he does not know whether he is or is not in the state of ritual ablution, then his previous certainty acts like a substantiated evidence and provides him with conjectural knowledge that he is still in the state of ritual ablution.

Meanwhile, Uṣūlīs who uphold that the principle of continuity is in fact a procedural principle, claim that there is a subtle difference between the evidentiary nature of the principle of continuity and other procedural principles. Accordingly, it is found that certain Uṣūlī *mujtahids* conclude that the evidentiary nature of the principle of continuity lies between the evidentiary nature of substantiated evidence and the evidentiary nature of practical principles.

Indeed, the discussion on procedural principles holds significant implications for the juristic process of deriving Sharīʿa precepts. In particular, the level of priority that the principle of continuity is given in this process is important, as if its evidentiary nature is deemed akin to substantiated evidence, then it ultimately has the potential of revealing knowledge of the objective reality and a *mujtahid* is required to use it before referring to any of the other procedural principles. Muẓaffar does not explicitly provide his opinion on the evidentiary

nature of the principle of continuity, however it can be suggested that since he does not discuss it in his discourse of legal epistemology, this strongly suggests that he categorises it as a procedural principle as opposed to a substantiated evidence.

1.5 Conclusion

The Shiites maintained that they had access to absolute knowledge of Sharī'a precepts owing to the presence of the impeccable (*ma'ṣūm*) imams, and as a result it is found that their development of legal theory/epistemology was relatively stagnant in comparison to the mainstream Sunni discourse. Indeed, it was only following the greater occultation that the Shiites, similarly to the mainstream Sunnis, realised the necessity of developing a legal theory that was based upon their own theological understanding. As such, during the formative period, Shiite *mujtahids* firmly maintained that knowledge of Sharī'a precepts could only be derived from evidence that emanates certainty (*qaṭ'*), and as a consequence they exclusively endorsed the epistemic validity (*hujjiyya*) of *qaṭ'ī* (certainty-bearing) evidence in the jurist derivation of Sharī'a precepts. However, following the emergence of evolving social factors, as well as the influence of the highly effective combination of formal logic and traditional epistemology that was offered in Sunni legal theory, this initial standpoint underwent a significant transformation. 'Allāma became the first Shiite *mujtahid* to also accept the epistemic validity of evidence that emanated conjecture (*ẓann*) of Sharī'a precepts, and as a result he argued for, and went

on to establish, the epistemic validity of the four-fold categorisation of evidence.

‘Allāma’s efforts resulted in a significant influence upon Shite Uṣūlī jurisprudence, which was severely criticised by the Akhbārīs. Their main argument centred on the claim that the Uṣūlīs were uncritically accepting mainstream Sunni innovations, and consequently were failing to remain true to the Shiite primary axiom of the non-validity of *ẓann* in the juristic derivation of Sharī‘a precepts. The Akhbārīs argued that knowledge of Sharī‘a precepts could only be derived from evidence that emanated *qaṭ‘*, and went as far as claiming that the only epistemologically valid (*hujja*) evidence that was available were the reports of the *ma‘ṣūm*.

This Akhbārī standpoint played a significant role in moulding the subsequent Uṣūlī thought. However, their dominance over Shiite jurisprudential circles eventually came to an end following the efforts of scholars such as Bihbihānī and Anṣārī. The post-Anṣārī discourse of legal epistemology has played a pivotal role in the subsequent development of the Uṣūlī thought, which has continued till the present day. One of the major contributing factors of this discourse has undoubtedly been the safeguarding of the primary axiom of the non-validity of *ẓann* in the juristic derivation of Sharī‘a precepts; however, in line with their understanding, instead of wholly dismissing the epistemic validity of the four-fold categorisation of evidence proposed by ‘Allāma, post-Anṣārī *mujtahids* have maintained that knowledge of Sharī‘a precepts **can** be

attained from the especial conjecture (*ẓann al-khāṣ*) that is emanated, by arguing that the Divine Lawgiver Himself has substantiated the epistemic validity of their juristic utility.

In light of this, Muẓaffar maintains in his work that the discourse of legal epistemology is in fact the most important discussion in the whole of legal theory. He advocates that this is primarily because legal epistemology evaluates, and effectively substantiates, the epistemic validity of a wide range of evidence that can potentially reveal knowledge, or produce *ẓann*, of Sharī'a precepts. Indeed, as elucidated in this chapter, an evaluation of the epistemic validity of evidence is of significant importance in the contemporary Uṣūlī discourse, as it emphasises that only when a particular evidence is deemed as *ḥujja* (epistemologically valid) in the technical Uṣūlī sense, can it be used in the juristic derivation of Sharī'a precepts. By attaining this status, it is established that not only does the evidence reveal knowledge of the Sharī'a precept, but it also grants a *mujtahid* with excusability, whereby the Divine Lawgiver cannot hold him accountable and subject him to chastisement.

CHAPTER TWO

The Primary Axiom of the Non-validity of *Ẓann*

As discussed in the previous chapter, the primary axiom proposed in Shiite legal epistemology is the denial of the epistemic validity (*hujjiyya*) of *ẓann*. This is undoubtedly the most significant epistemological underpinning of the contemporary discourse of Shiite legal epistemology, as the non-validity of *ẓann* was not only initially proposed during the formative period of Shiite legal theory, but it is a view that has been unwaveringly maintained and reinforced in post-Anṣārī legal epistemology. As a result, the mainstream position within the Shiite legal tradition has predominately been recognised to have denied the epistemic validity of any evidence that emanate mere *ẓann* of Sharīʿa precepts in the juristic process of deriving Sharīʿa precepts.

It must be noted that by the term *ẓann*, Shiite legal epistemology – particularly the post-Anṣārī discourse - refers to *ẓann bi-mā huwa ẓann* as opposed to *ẓann al-khāṣ*, and as such upholds the non-validity of conjecture qua conjecture or conjecture per se, rather than especial conjecture that is substantiated by the Divine Lawgiver Himself. It can therefore be stated that in accordance with the contemporary discourse of Uṣūlī epistemology, the primary axiom is of the non-validity of “conjecture qua conjecture” or “conjecture per se.” As such, post-Anṣārī *mujtahids* have offered various different arguments to establish and prove the non-validity of *ẓann*, and in general these arguments are grouped into two categories – textual and non-textual.

Thus, this chapter will critically analyse how contemporary legal epistemology has endeavoured to infer the primary axiom of the non-validity of *ẓann* through using the textual evidence from the Qur'ān and *sunna*. It will also consider the methods used within the mainstream (*mashhūr*) opinion amongst contemporary Uṣūlīs to justify the primary axiom using both non-textual and (or) rational evidence. This analysis will thus investigate whether the primary axiom of the non-validity of *ẓann* is a concept that is theological or religious, or whether it is purely rational. Indeed, if it is found that the primary axiom is religious i.e. directly inferred from the revelation of the Divine Lawgiver, then it is religiously or theologically binding upon every *mukallaf* to accept it, insofar as a *mukallaf* considers himself to be a Shiite Muslim. On the other hand, if it is found that the primary axiom is based on reason, then it is required to be established using rational reasoning and evidence, and as a result it can be asserted from the outset that the primary axiom is not necessarily binding upon a *mukallaf*. This is because in the hypothetical situation where rational reasoning or evidence is **not** found to prove the primary axiom, a *mukallaf* would not be required to abide by it. In essence, through analysing the textual and non-textual arguments provided within the discourse of Shiite legal theory, this chapter will elucidate the primary epistemological underpinning or axiom that is maintained in the contemporary Uṣūlī discourse, and evaluate how this impacts the utility of a wider range of evidence in the juristic derivation of Sharī'a precepts.

2.1 Textual Argument to Prove the Primary Axiom

A range of different disciplines studied within the Shiite, or in fact Muslim, tradition all display a common tendency of seeking to prove and establish their intellectual expositions by taking recourse to the textual sources, namely the Qur'ān and *sunna*. Evidently, this is because both of these sources are theologically accepted to be either directly or indirectly inspired by God – or the Divine Lawgiver – Himself. Whilst the Qur'ān is accepted by all Muslims as being a direct revelation from God Himself, the Shiites specifically accept that the *ma'sūm* are the Divine agents of God, and therefore theologically acknowledge that they only act, endorse, and speak in accordance with God. Owing to this, Shiite legal theory takes recourse to these textual sources in order to establish its epistemic position with regards to *ẓann* in the juristic process of deriving Sharī'a precepts.

The verse of the Qur'ān that is most commonly quoted in Shiite jurisprudence to establish and prove the non-validity of *ẓann* (or conjecture qua conjecture) is: **“Verily, *ẓann* does not take the place of truth⁹³.”** Muḏaffar seemingly proposes this verse as the primary proof that invalidates the indication of *ẓann*. In his analysis of this verse, Muḏaffar points out that its apparent indication explicitly signifies that the Divine Lawgiver does not permit mankind to follow

⁹³ Qur'ān 10:36, this verse is largely quoted by a number of Shiite *mujtahids* either to prove, or to support, the non-validity of *ẓann*. See Muḏaffar, *Uṣūl al-fiqh* vol. 2, pp.15-16; Faḏlī, *Durūs uṣūl fiqh al-Imāmiyya* vol. 2, p. 269

or act in accordance with *ẓann*, because *ẓann* does not take the place of “truth”⁹⁴.

It is noted that all major exegetes of the Qur’ān - both Shiite and Sunni - have unanimously agreed that in the context of this verse, God is referring to those non-believers (*kufār*) who insisted on imitating the conjectural knowledge provided by their forefathers, rather than following and acting in accordance with the “truth” (*ḥaqq*) that was revealed to them by the Prophet. Moreover, they also explain that by the word “truth”, God means absolute knowledge (*‘ilm*), and thus it is held that God uses the word “truth” equally and synonymously with absolute knowledge⁹⁵. Consequently, in line with this understanding, whenever one possesses absolute knowledge of a particular thing, he or she necessarily knows the truth or reality of that particular thing, and based on the apparent indication of the aforementioned verse, Shiite *mujtahids* primarily conclude that in the juristic process of deriving Sharī‘a precepts, anything that does not bring about absolute knowledge does not reveal the truth. Consequently, it is advocated that the Divine Lawgiver

⁹⁴ It must be noted that the reason why Muẓaffar “seemingly” establishes this verse as the primary proof for the non-validity of *ẓann* is because as it will become apparent in the next chapter (Chapter Three) he gives a rational argument to establish the epistemic validity of *qaṭ’* (certainty), which in itself rationally proves the non-validity of *ẓann*. Therefore, Muẓaffar discusses both the textual and the rational proofs for the non-validity of *ẓann*, but since he gives the textual argument first, it suggests that he uses it as the primary proof.

⁹⁵ See Ṭabrisī, Abū ‘Alī al-Faḍl. *Majma’ al-bayān fī tafsīr al-Qur’ān* 10 vols. (Beirut: Dār wa Maktaba Hilāl, 2005) vol. 5, p. 183; Ṭabāṭabā’ī, Sayyid Muḥammad Ḥusayn. *Al-Mizān fī tafsīr al-Qur’ān* (Beirut: Mu’assasat al-‘ilmī li-l Maṭbū‘āt, 1997), vol. 19, pp. 41-42; Qurtubī, Muḥammad b. Aḥmad b. Abī Bakr. *Al-Jāmi’ li-aḥkām al-Qur’ān*, 25 vols. (Beirut: Mu’assasat al-Risālat, 2006), vol. 10, p. 502; Ibn Kathīr, Ismā‘īl b. ‘Umar. *Tafsīr al-Qur’ān al-‘aẓīm*, 9 vols. (Saudi: Dār al-Ṭayyiba li-l Nashar wa-l Taūzīm, 1999), vol.4, pp. 267-268

Himself dismisses the epistemic validity of *ẓann*, as it does not possess the same epistemic value as absolute knowledge.

However, although the apparent indication of this verse is primarily used to prove the non-validity of *ẓann*, it is not sufficient in establishing that it is impermissible or prohibited to follow and act in accordance with it. Therefore, in support of this verse, Muẓaffar quotes the following verse: “They follow nothing but conjecture: they do nothing but lie⁹⁶”. Muẓaffar concludes that this Qur’ānic verse clarifies that the Divine Lawgiver is critical of those who follow or act in accordance with *ẓann*, as He classifies them as liars. Moreover, Muẓaffar also cites the following verse:

“Say: Have you seen what Allah has sent down to you of provision of which you have made [some] lawful and [some] unlawful?” Say, Has Allah permitted you [to do so], or do you invent [something] about Allah?⁹⁷”

Muẓaffar suggests that this verse indicates that God despises those who forge or invent a lie against Him or attribute a lie to Him. He therefore concludes that in the context of the jurisprudential discourse, this verse signifies that a *mujtahid* cannot derive God’s law – or derive a law and attribute it to God - without His permission, as such an act would tantamount to forgery against

⁹⁶ Qur’ān 6:116

⁹⁷ Qur’ān 10:59

God, which in itself is sinful and prohibited. Consequently, Muḏaffar maintains that in line with both the aforementioned verses, there is no doubt that following or acting in accordance with *ẓann* is prohibited, as the Divine Lawgiver Himself has categorically **not** given such permission, and consequently by failing to comply with His prohibition, a *mukallaf* would sin and possibly be subject to chastisement⁹⁸.

Thus, it becomes apparent that based on Muḏaffar's interpretation of the apparent indication of these verses of the Qur'ān, the Divine Lawgiver dismisses the epistemic value of *ẓann*. Moreover, He also refrains from permitting a *mukallaf* to follow and act in accordance with it. Therefore, conforming to the predominant Shiite tradition, Muḏaffar not only maintains the primary axiom of the non-validity of *ẓann*, but he also expounds that a *mukallaf* is in fact prohibited to follow or act in accordance with its indication.

It is clear that by implying that it is prohibited (*ḥarām*) to follow or act in accordance with *ẓann*, Muḏaffar – together with other Uṣūlīs who use the aforementioned verses as proofs that support the primary axiom⁹⁹ - necessarily indicates that the primary axiom of the non-validity of *ẓann* is a Sharī' precept (*ḥukm al-Sharī'a*)¹⁰⁰, which is directly inferred from the apparent indication of

⁹⁸ Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 16

⁹⁹ For instance, it is found that Anṣārī also supports the non-validity of *ẓann* using the aforementioned verses. Indeed, it can be said that Muḏaffar was in fact inspired by Anṣārī to include these verses. See Anṣārī, *Farāi'd al-uṣūl* vol. 2, p. 49

¹⁰⁰ It must be noted that in the Shiite jurisprudential discourse, Sharī' precepts are either categorised as: *Wājib* (obligatory), whereby a *mukallaf* is obliged to perform a certain action,

the textual evidence. However, a major criticism given against the categorisation of the primary axiom as a Sharīʿa precept, based solely on the apparent indication of the textual sources, is that it causes a circular argument that in itself is a logical fallacy.

This is explained as follows. As discussed in the previous chapter, Muḥaffar claims that the primary purpose of Shiite legal epistemology is to evaluate the epistemic validity of evidence that can potentially reveal knowledge of Sharīʿa precepts. Accordingly, all evidence that possess the potential to achieve this are included within the subject matter of legal epistemology, and if they are established to be epistemologically valid (*hujja*), they may be used in the juristic process of deriving Sharīʿa precepts. As such, one of the key evidence that is evaluated within this discourse is the hermeneutical primacy of apparent meaning (*hujjiyya aṣālat al-ẓuhūr*) of the textual sources. However, it is found that prior to evaluating its epistemic validity, Muḥaffar has in fact used the apparent meaning of the aforementioned verses of the Qurʾān to infer the primary axiom. This clearly highlights that Muḥaffar infers the Sharīʿa precept of the prohibition of following and acting in accordance with *ẓann* by following and acting in accordance with the apparent meaning of the Qurʾān,

and held accountable for acting contrary; *Harām* (prohibited), whereby a *mukallaf* is forbidden to perform a certain action, and can be held accountable for acting contrary; *Mustahab* (recommended), whereby a *mukallaf* is recommended to perform a certain action, but is not held accountable for acting contrary; *Makruh* (discouraged), whereby a *mukallaf* is discouraged from performing a particular action, but is not held accountable for acting contrary; *Mubāh* (optional), whereby a *mukallaf* has an option or a choice to perform a particular action or not, and is not held accountable either way. For further discussion on this, see Faḍlī, *Mabādī al-uṣūl*, pp. 10-15

which itself is conjectural (*ẓanni*) until it is proven to be epistemologically valid.

As such, it can be suggested that either Muḏaffar presupposes the epistemic validity of the hermeneutical primacy of apparent meaning as a basic presumption of another discipline, and therefore does not admit that it is evaluated within the discourse of legal epistemology, or he considers that the primary axiom of the non-validity of *ẓann* is in itself a basic presumption, indicating that this judgement is not primarily established or proven in legal epistemology, but instead has been established within another discipline and merely assumed in legal epistemology.

Clearly, the former proposition is not true, as Muḏaffar advocates that any evidence that can potentially reveal knowledge of Sharī'a precepts is included within the bounds of the subject matter of legal epistemology. Indeed, Muḏaffar devotes a large section of his legal epistemology to the evaluation of the epistemic validity of the hermeneutical primacy of apparent meaning of textual sources. On the other hand, although Muḏaffar does not categorically state that the primary axiom is specifically established and proven within another discipline, he also does not explicitly elucidate that it is established within the discourse of legal epistemology. Therefore, although highly unlikely, by suggesting that Muḏaffar accepts the primary axiom of the non-validity of *ẓann* as a basic presumption, the risk of creating a circular argument is avoided.

In support of the aforementioned verses of the Qur'ān, the other textual evidence that is usually applied in Shiite legal epistemology is the transmitted reports that emanate the *sunna* of the *ma'sūm*. There are numerous reports that either directly or indirectly indicate upon the non-validity of *ẓann*, and imply the prohibition of following and acting in accordance with it. Amongst these traditions, al-Faḍlī in *Durūs fil Uṣūl Fiqh al-Imāmiyya* highlights the following report that is commonly quoted by Shiite *mujtahids* to prove the primary axiom:

“A person who judges with injustice, and has knowledge (*ilm*) of it, then he is [destined] for fire. A person who judges with injustice, and has no knowledge of it, then he is [destined] for fire. A person who judges truthfully, and has no knowledge of it, then he is [destined] for fire. A person who judges truthfully, and has knowledge of it, then he is in paradise¹⁰¹.”

Although this reported tradition is in the context of legal arbitration that is carried out by a judge (*qāḍī*), its apparent indication interestingly shows that in accordance with the *ma'sūm*, the Divine Lawgiver even condemns those who arrive at a truthful arbitration by mere coincidence, without taking recourse to evidence that gives full disclosure of absolute knowledge. Therefore, this

¹⁰¹ See al-Faḍlī, *Durūs uṣūl fiqh* vol. 1, p. 270

tradition is interpreted and utilised within Shiite legal epistemology to support the aforementioned verses of the Qur'ān, as it clearly emphasises that anything less than absolute knowledge, or anything that is effectively conjectural, has no epistemic value¹⁰². This is enhanced by the notion that conjecture is not even sufficient in granting legal immunity to judges who deal with worldly arbitration, let alone to *mujtahids* who endeavour to derive the Divine Sharī'a precepts.

However, as discussed, by relying on the apparent meaning of this tradition, whether by itself or in support of the other verses of the Qur'ān, the same circular argument is created. In order to avoid this, it must either be admitted that the primary axiom is established and proven in another discipline and merely pre-assumed within the discourse of legal epistemology, or that the textual indications are not the primary evidence that establish the non-validity of *ẓann*, rather they are supporting evidence.

Nevertheless, a further criticism posed against *mujtahids* who arrive at the primary axiom based purely upon the apparent indication of the textual sources is provided by Ṣadr in *Durūs fi-l 'ilm al-uṣūl*. Ṣadr specifically mentions that amongst the post-Anṣārī *mujtahids*, Shaykh Mīrzā Ḥusayn al-Na'īnī (d. 1355/1936), who as mentioned was one of Muẓaffar's most prominent teachers, explicitly proclaimed that it is prohibited to follow and act in

¹⁰² *Ibid.*

accordance with *ẓann* based on the apparent general indication (*iṭlāq*) of the verses of the Qur’ān. Ṣadr criticises al-Nā‘inī’s approach by arguing that it is inaccurate to infer the primary axiom solely from the general indication of the verses, as he suggests that the apparent indication of the verses – or other textual indicators - do not indicate such a prohibition (*taḥrīm*). Ṣadr reaches this argument by classifying the Divine Lawgiver’s command against *ẓann* (as interpreted from the aforementioned verses) as an *amr al-irshādī* as opposed to an *amr al-mawlawī*¹⁰³.

In Shiite legal theory, a command (*amr*) can either lead to a “devotional” or “religious” precept (*ḥukm al-mawlawī*), or a “directive” or “instructive” precept (*ḥukm al-irshādī*). The former refers to a precept that is directly commanded by the Divine Lawgiver in the textual sources, and therefore such a command can only be inferred from the Qur’ān and *sunna*. As such, it is binding upon a *mukallaf*, whereby if he intentionally disobeys such a command then he has committed a sin and can be held accountable in front of the Divine Lawgiver¹⁰⁴. An example of a religious precept that is inferred from the textual sources is the command to pray (*ṣalāt*). This command is directly explicated in the verse of the Qur’ān that states “establish prayer.” In accordance with the apparent indication of this verse, the Divine Lawgiver directly commands the *mukallaf* to pray; therefore it is devotionally or religiously binding upon him to

¹⁰³ See Ṣadr, *Durūs* 3 vol. 2, p. 49

¹⁰⁴ For a detailed explanation of *amr al-irshādī* and *amr al-mawlawī*, see Ṣanqūr, Shaykh Muḥammad. *Mu’jam al-Uṣūl* 2 vols. (Beirut: Mu’assasat al-Tarīkh al-‘Arabī, 2011), vol. 1 pp. 330-334 and pp. 337-338

pray, and if he was to intentionally disobey this command, the *mukallaf* has committed a sin and would be held accountable.

Meanwhile, *ḥukm al-irshādī* refers to a precept that is primarily inferred from reason, and yet is also found in the textual sources. Therefore, instead of simply being inferred from the command of the Divine Lawgiver, it is a command that is independently discerned or judged by reason (also known as *ḥukm al-‘aql*) that is correspondingly mentioned or commanded within the Qur’ān and *sunna*. Thus, such a precept is described as an instructive command, for its primary function is to direct and guide mankind towards that which they already rationally comprehend. An example of a precept that is independently discerned by reason is “the obligation of being just,” inasmuch as reason independently – i.e. without the aid of the Divine Lawgiver - has the ability to infer the moral property of “praiseworthiness” of justice and arrive at this rational precept. However, when the command of being just is also indicated within the textual sources of the Qur’ān and *sunna*, then it is recognised as an instructive or directive command, whose function is not only to guide mankind but to also confirm the dictates of reason.

Although this is an area of discrepancy, the view that is predominately held within Shiite jurisprudential circles is that the difference between an instructive command and a religious command is that when a *mukallaf* intentionally disobeys a religious command, this tantamounts to sinning and he can be held accountable. However, if a *mukallaf* intentionally disobeys an instructive

command, then this does not tantamount to sinning and the *mukallaf* is not held accountable, but has to face the consequence of not following or acting in accordance with the command. For example, an instructive command that is commonly discussed within the Shiite jurisprudential discourse is the command of reciting the name of God prior to slaughtering a chicken. In such a case, if a *mukallaf* was **not** to recite the name of God prior to slaughtering, then he has not committed a sin, nor can he be held accountable. However, the consequence of this is that the chicken is no longer edible for him, nor is the *mukallaf* permitted to feed it to other Muslims¹⁰⁵.

Based on this distinction, Ṣadr maintains that the command that proves the primary axiom is an instructive command as opposed to a religious command. As such, Ṣadr advocates that the command is rational, inasmuch as it is primarily discerned using reason, and correspondingly is also confirmed within the religious textual sources. Indeed, it can be argued that this observation is correct, as whenever a rational *mukallaf* has the option to choose between two conflicting evidence - whereby one is certainty-bearing (*qaṭʿī*) and the other is conjectural (*ẓannī*) - then he rationally chooses to follow and act in accordance with the *qaṭʿī* evidence, and completely disregard the *ẓannī* evidence. This is

¹⁰⁵ It must be noted that Sayyid Muhammad Rizvi in *The Infallibility of the Prophets in the Qurʾān* points out that if a *mukallaf* disobeys an instructive command then he is not committing a sin. He substantiates this point by giving an example of a doctor, who advises his patient to drink a certain medicine; if the patient ignores the doctor's advice, then he is not committing a sin or a "crime", but he will surely suffer the consequence, inasmuch as his illness can be prolonged and his health might further deteriorate. See Rizvi, *The Infallibility of the Prophets in the Qurʾān*, pp.23-24; also for further information on the implication of the distinction between *amr al-mawlawī* and *amr al-irshādī* on other Shariʿa precepts, see Yazdi, "Islam and Different Forms of Government" at <http://www.imamreza.net/eng/imamreza.php?id=8912>

unmistakeably because by following and acting in accordance with a *qaṭʿī* evidence, a rational *mukallaf* is certain and has satisfaction (*iṭmʿinān*) that he has fulfilled the maximum responsibility (*taḳlīf*) required. In essence, reason has the ability to independently discern the non-validity of *ẓann*, and the textual or religious sources merely confirm this rational judgement.

Moreover, by upholding that the primary axiom is an instructive command, Ṣadr, in contrast to Naʿīnī, advocates that following or acting in accordance with *ẓann* is **not prohibited** by the Divine Lawgiver, insofar as the *mukallaf* does not commit a sin and be held as accountable. Rather, Ṣadr proposes that the *mukallaf* has to face the consequence of following and acting in accordance with *ẓann*¹⁰⁶. This implies that if a *mukallaf* is to act in accordance with *ẓann*, and as a result acts in contradiction to that which is in the objective reality (*wāqiʿī*) then he can be held accountable. However, if by following *ẓann*, a *mukallaf* is to attain that which is required or in the objective reality, then he cannot be held accountable.

In essence, it becomes apparent that there exists a discrepancy amongst the contemporary Shiite *mujtahids* with regards to the exact nature of the textual command that is used to determine the epistemic validity of *ẓann*. For some *mujtahids*, such as Naʿīnī and seemingly Muṣaffar, the command issued by the

¹⁰⁶ See Ṣadr, *Durūs* 3 vol. 2, p. 49

Divine Lawgiver is an *amr al-mawlawī* (religious command)¹⁰⁷, and as a result they claim that not only is it invalid for a *mukallaf* to follow and act in accordance with *ẓann*, but it is also prohibited. Accordingly, if a *mukallaf* disobeys this command and chooses to act in accordance with *ẓann*, then he can be held accountable for it. An obvious implication of this understanding is that it restricts the juristic utility of a wider range of evidence in the derivation of Sharī'a precepts, as it is essentially limited to evidence that emanate *qaṭ'*, or evidence that emanates especial conjecture (*ẓann al-khāṣ*).

On the other hand, *mujtahids* such as Ṣadr argue that the command issued by the Divine Lawgiver is an *amr al-irshādī* (instructive command), thus indicating that the primary axiom of the non-validity of *ẓann* is primarily and independently inferred from reason, and correspondingly confirmed within the religious sources. This understanding is accepted by the mainstream opinion (*mashhūr*) within the post-Anṣārī jurisprudential discourse i.e. it acknowledges that the primary axiom is inferred from reason, and considers the apparent indication of the textual sources as confirming the dictates of reason¹⁰⁸.

¹⁰⁷ It must again be emphasised that the reason why I suggest that Muṣaffar 'seemingly' establishes the primary axiom as a religious command is because he does not categorically specify that it is a religious command. Moreover, based on the argument he has provided to establish the epistemic validity of certainty (*qaṭ'*) in the following Chapter, it can also be concluded that in line with his understanding the primary axiom is something that is rational.

¹⁰⁸ See Ḥaydarī, Kamāl. *Uṣūl al-istinbāṭ al-fiqhī: al-Ẓann dirāsāt fī ḥujjiyyati-hi wa aqsāmi-hi wa aḥkāmī-hi* (Qum: Dār al-Farāqid, 2008), p. 26

2.2 Non-Textual Argument to Prove the Primary Axiom

The core non-textual argument offered by mainstream Uṣūlīs to prove the primary axiom of the non-validity of *ẓann* is that, in comparison to *qaṭʿ* (certainty), *ẓann* is unable to provide full explication (*bayān al-tām*), and as a result most post-Anṣārī *mujtahids* do not consider it to be epistemologically valid in the Uṣūlī sense. In other words, due to the lack of explication or disclosure that is attained through using evidence that emanates *ẓann*, a *mukallaf* can be held accountable for acting in accordance with its indication; moreover, his right of excusability is also taken away. This contemporary mainstream Uṣūlī opinion regarding the epistemic validity of *ẓann* is exemplified by Shaykh Muḥammad Kāẓim al-Khurāsānī (d.1329/1911), who in *Kifāyat al-Uṣūl*¹⁰⁹ claims that:

There is no doubt that substantiated evidence (*imāra*) do not provide absolute knowledge, and are not like *qaṭʿ*, whose epistemic validity (*ḥujjiyya*) is necessarily correlated to its essence. Indeed the establishment of the epistemic validity of it [i.e. substantiated evidence] is [either] dependent on postulation [of the Divine Lawgiver], or [on whether] the precludes of the argument of *insidād* are satisfied...

¹⁰⁹ It must be noted that Khurasānī's *al-Kifāyat al-Uṣūl* is one of the key Uṣūlī textbooks studied in Shiite seminaries. It is usually undertaken by a student at an advanced level after they have completed studying Muṣaffar's *Uṣūl al-Fiqh*.

[Therefore,] it is clear that other than *qaṭʿ* nothing can be epistemologically valid without [further] proof.¹¹⁰

This highlights that in accordance with the mainstream opinion, the epistemic validity of *qaṭʿ* is necessarily correlated to its essence, and thus it does not need to be proved further. On the other hand, *ẓann*, by default, is not considered as epistemologically valid until its epistemological validity is proven, and at this juncture, it can be pointed out that as proposed by Khurāsānī, the Uṣūlī School has offered two distinctive methods to prove or substantiate the epistemic validity of *ẓann*. They have either argued that certain *ẓann* is especial conjecture (*ẓann al-khāṣ*), in that the Divine Lawgiver Himself has directly postulated its epistemic validity, or alternatively used the theory of *insidād* (also known as *dalīl al-insidād*), which unrestrictedly substantiates the epistemic validity of conjecture qua conjecture. Both of these methods are discussed further in the forthcoming chapters. Nonetheless, the statement proposed by Khurāsānī maintains that the mainstream Shiite position regarding the primary axiom is heavily dependant upon the unmistakeable epistemic validity of *qaṭʿ*.

Based on the mainstream belief that only full explication, or *qaṭʿ*, has the ability to indicate on the characteristics of epistemic validity (*ḥujjiyya*) i.e. accountability and excusability, mainstream Uṣūlīs have formulated the

¹¹⁰ See Khurāsānī, Muḥammad Kāẓim. *Al-Kifāyat al-Uṣūl* 2 vols. (Qum: Majmaʿ al-Fikr al-Islāmī, 2009), vol. 2, p. 38

principle of “*qubḥ al-‘iqāb bi-lā bayān*” (the blameworthiness of chastisement without explication)¹¹¹. This is claimed to be a rational principle, insofar as in accordance with its indication, it is rationally blameworthy or repulsive for the Divine Lawgiver to hold a *mukallaf* accountable for not abiding by a duty or responsibility (*taklīf*) that He Himself has not fully explicated or disclosed. Accordingly, the mainstream conclude that only when full explication – or *qaṭ‘* - about a *taklīf* is available, can a *mukallaf* act in accordance with it and be held accountable. In contrast, if there is no explication, or mere conjectural (*ẓannī*) explication available, then a *mukallaf* cannot be held accountable.

It must be noted that the mainstream opinion has formulated this principle due to its theological affiliation with the ‘Adliyya thought. In accordance with this thought, the Divine Lawgiver judges the intrinsic moral properties of acts in the same way as rational people do, as the Divine Lawgiver is the Chief of all rational agents (*ra’īs al-‘uqalā*). Thus, it is concluded that the Divine Lawgiver, by priority, also acts in line with the principles of rational beings, which effectively indicates that the extent of the Divine Lawgiver’s right over the *mukallaf* is equivalent to the extent of the right a human master possesses over his subject¹¹². Accordingly, just as the principle of “blameworthiness of chastisement without explication” applies to a human master, it too applies to the Divine Master, and therefore the Divine Master only has the right to hold a *mukallaf* accountable in cases where He has given full explication or

¹¹¹ See Ḥaydarī, *al-Ẓann*, pp. 27-28

¹¹² *Ibid*, pp. 28-32

disclosure. In essence, according to the mainstream view, the epistemic validity of a command issued by the Divine Master is equal to the command issued by a human master, and just as it is immoral for a human master to hold his or her subject accountable based on a *ẓannī* explication, it is also immoral for the Divine Master to hold His *mukallaf* accountable based on a *ẓannī* explication.

2.2.1 Ṣadr's Critique of the Mainstream Non-Textual Argument

Although Ṣadr too maintains that the primary axiom is rational, he criticises the mainstream view regarding the non-validity of *ẓann* by pointing out that by formulating the principle of “blameworthiness of chastisement without explication”, the mainstream has falsely analogised the mastership that is possessed by the Divine Master as univocally parallel to the mastership that is possessed by a human master. Instead, Ṣadr endeavours to prove the falseness of this analogy by elucidating that the property of mastership attributed to the Divine Lawgiver is theologically accepted as an essential part of His essence in the Shiite belief. However in contrast, the mastership that is possessed by a human master is merely accidental i.e. it is possible to conceptualise a human being without possessing the property of mastership, however it is **not** possible to conceptualise the Divine Master without the property of mastership. Based on this distinction, Ṣadr proclaims that the rational principle of “blameworthiness of chastisement without explication” is only rational when it is applied to a human master. However, it is irrational when it is applied to the

Divine Lawgiver, for it is possible that the mastership of the Divine Master might differ significantly to the rationally comprehended mastership of the human master.

Consequently, Ṣadr suggests that it is inaccurate to claim that the principle of “blameworthiness of chastisement without explication” applies to the Divine Master in the same way that it does to the human master, which in turn restricts the extent of His mastership - or the extent of the right He has of obedience (*ḥaqq al-tā‘a*) - to only those instances in which He gives full disclosure¹¹³. Alternatively, Ṣadr proposes that the parameter or the extent of the mastership of the Divine Lawgiver cannot be proved through logical or rational demonstration, rather he suggests that it is simply known through rational intuition¹¹⁴. According to Ṣadr, rational intuition is able to recognise that since the Divine Lawgiver is the Creator (*khāliq*) of all things, He, by His very essence, is the Master (*mawla*) and the Proprietor (*mālik*) of all things, and due to his proprietorship He necessarily possesses the absolute right of obedience

¹¹³ This view of Ṣadr is explained in detail in Sayyid Maḥmūd al-Hāshimī Shārwadī’s *Buḥūth fi ‘ilm al-uṣūl* which is a commentary on the thought of Ṣadr, see Shārwadī, Sayyid Muḥammad Hāshimī. *Buḥūth fi ‘ilm al-uṣūl* 7 vols. (Beirut: Mu’assasat Dā’ira Ma’ārif al-Fiqh al-Islāmī, 2005) vol. 4, pp.186-187; Ṣadr’s criticism against the Uṣūlī mainstream can also be found in Haydarī, *al-ẓann*, pp. 26-32; and Ṣadr, *Durūs* 3 vol. 2 pp. 35-38

¹¹⁴ It must be noted that Ḥaydarī elaborates that in line with Ṣadr’s understanding, it is not possible to prove the mastership of the Divine Lawgiver by using rational demonstration because it leads to endless inconclusive questions. For instance, if it is accepted that the criterion for the mastership of the Divine Lawgiver is due to Him being the Creator (*Khāliq*), then this leads to a series of further questions; firstly, what evidence is there to suggest that a creator possesses mastership and the right of obedience? Secondly, does the Divine Creator require the permission of the *mukallaf* before charging him with responsibility (*taklīf*)? For his deliberations on this, see Ḥaydarī, *al-ẓann*, p. 29

(*ḥaqq al-ṭā'a*)¹¹⁵. Owing to this, Ṣadr claims that intuitively it is fully rational that the extent of His mastership is extended to not only include those instances in which He gives full disclosure or *qaṭ'*, but also to those instances in which He gives less than *qaṭ'*, i.e. conjectural (*ẓannī*) disclosure or doubtful disclosure (*shakk* or *iḥtimāl*)¹¹⁶.

In essence, due to the Divine Lawgiver's creatorship (*khāliqiyya*) and proprietorship (*mālikiyya*), the principle of "blameworthiness of chastisement without explication" does not apply to Him in the same way that it does to a human master. As a result, Ṣadr proposes that the Divine Lawgiver can not only hold a *mukallaf* accountable for acting contrary to full disclosure, but He can also hold him accountable for acting contrary to conjectural or doubtful disclosure. In the same way, the Divine Lawgiver can not only grant a *mukallaf* with excusability for acting in accordance with full disclosure, but He can also grant him with excusability for acting in accordance with conjectural or doubtful disclosure. Therefore, the extent of the right or mastership of the Divine Lawgiver is unrestricted, and it is entirely dependent upon the Divine Lawgiver whether He wishes to make disclosure epistemologically valid (*ḥujja*) or not.

¹¹⁵ Apart from the fact that the Divine Lawgiver is the Creator (*khāliq*) and the Proprietor (*mālik*) of all things, another argument that Ṣadr gives to prove that the Divine Lawgiver has absolute right of obedience (*ḥaqq al-ṭā'a*) is that of *wujūb al-shukr al-mun'im*. In accordance with this argument, it is rationally obligatory upon every human to thank or show gratitude towards the one who bestows or the one who is recognised as the bestower. Therefore, since the Divine Lawgiver is the Bestower of all things, intuition recognises that He must be offered gratitude for all that He has bestowed, and owing to this He has the absolute right of obedience. See Shārwadī, *Buḥuth fī 'ilm al-uṣūl* vol. 4, p. 28

¹¹⁶ See Ṣadr, *Durūs* 3 vol. 2, pp. 36-37

Therefore, it has become apparent that Ṣadr views the primary axiom of the non-validity of *ẓann* as inaccurate. Instead, he proposes that as far as a *mukallaf* is concerned, every disclosure (*inkishāf*) from the Divine Lawgiver – whether it is certain or conjectural in nature - is epistemologically valid, and therefore unless stipulated otherwise, the *mukallaf* is required to follow and act in accordance with every disclosure if there exists even the slightest possibility that it has been revealed by the Divine Lawgiver. This understanding is upheld by the primary principle of *aṣālat al-ishtighāl* (the principle of pre-occupancy). In accordance with this principle, a *mukallaf* is required to undertake or be “pre-occupied” with every possible duty disclosed by the Divine Lawgiver, irrespective of whether it is revealed with full disclosure or conjectural disclosure, and he can only be relieved of performing such duties if the Divine Lawgiver decides to stipulate otherwise¹¹⁷. It is clear that Ṣadr’s proposed theory differs significantly to the mainstream opinion, as the primary principle proposed by the latter is *aṣālat al-barā’a* (the principle of exception), which indicates that a *mukallaf* is exempt from following or acting in accordance with every disclosed duty from the Divine Lawgiver, with the exception of those duties that are explicated by full disclosure.

¹¹⁷ *Ibid*, pp. 37-38; also see Ḥaydarī, *al-Ẓann*, p. 31

It is important to note that in his book entitled *al-Zann*, Kamāl Ḥaydarī¹¹⁸ admits that Ṣadr accurately criticises the mainstream position for constructing a false analogy that univocally equates the mastership of the Divine Master to the mastership of a human master. However, he also points out that it is inaccurate of Ṣadr to conclude that the extent of the Divine Lawgiver's mastership is absolute due to Him having the attributes of being the Creator and the Proprietor. Rather, Ḥaydarī argues that the Divine Lawgiver is also recognised through other divine names and attributes, which lead to the cancelation of the aforementioned attributes. For example, he suggests that rational intuition is not only able to consider that the Divine Lawgiver can hold a person accountable through His attributes of being the Creator and the Proprietor, but it also has the ability to consider that the Divine Lawgiver can grant a person with excusability through His attributes of being All Merciful (*raḥmān*) and All Just (*ʿādil*)¹¹⁹. Ḥaydarī exemplifies this by pointing out that:

It is possible to consider that the Divine Lawgiver can recompense a sinner in two distinct ways; if we look at the Divine Lawgiver as being the Most Decisive Judge (*ḥakīm*), then it is more than likely to conclude that the Divine Lawgiver would punish the sinner. However, if we look at the Divine Lawgiver as the Most Merciful (*raḥmān*), then it is more than likely to conclude that the Divine Lawgiver would pardon the

¹¹⁸ It must be noted that Kamāl Ḥaydarī is one of the most prolific students of Ṣadr, and is currently deemed as one of the most prominent seminary teachers of *uṣūl al-fiqh*.

¹¹⁹ *Ibid*, p. 31

sinner. Effectively, it is found that there is somewhat a conflict between the respective names and attributes of the Divine Lawgiver¹²⁰.

This clearly illustrates that there is no set rule on how the Divine Lawgiver can choose to deal with a *mukallaf*. As a result of this, Ḥaydarī provides a pragmatic theological conclusion in which he asserts that the extent of the mastership that the Divine Lawgiver possesses over a *mukallaf* only reaches to the point where His Divine attributes do not convene and contradict, or cancel out the effects of, one another. In accordance with Ḥaydarī, the only instances where the attributes of the Divine Lawgiver do **not** lead to contradictory effects are when He explicates a duty with full disclosure¹²¹. Based on this understanding, if a *mukallaf* has full disclosure of a duty, and yet acts contrary to it, then the Divine Lawgiver – through being the Creator and the Proprietor - can hold him accountable. However, if a *mukallaf* has conjectural disclosure of a duty, then the various attributes of the Divine Lawgiver can lead to a contradictory effect i.e. it is possible for the Divine Lawgiver to either hold the *mukallaf* accountable based on Him being the Creator and the Proprietor, or alternatively grant the *mukallaf* excusability based on Him being All Merciful.

In essence, it is arguable that by modifying Ṣadr's theological underpinnings, Ḥaydarī effectively establishes the mainstream position, by maintaining that the mastership of the Divine Lawgiver only reaches to the extent of when He

¹²⁰ *Ibid.*

¹²¹ *Ibid*, p. 32

gives full disclosure. Consequently, Ḥaydarī upholds the primary axiom of the non-validity of *ẓann*.

In essence, it is found that the mainstream position maintains that in theory (*maqām al-thubūt*), it is impossible for the Divine Lawgiver – due to Him being the Head of all rational beings - to hold a *mukallaf* accountable without providing him with full disclosure. Accordingly, it is upheld that epistemic validity (*hujjiyya*) is necessarily correlated to the essence of full disclosure, or *qaṭʿ*, and cannot be separated from it. Furthermore, the mainstream position denies the epistemic validity of anything other than *qaṭʿ*, and upholds the primary axiom of the non-validity of *ẓann*. This view is supported by Ḥaydarī, who concludes that the mastership of the Divine Lawgiver only reaches the extent to when He gives full disclosure, as in the event of conjectural disclosure, His Divine attributes would contradict one another. Although Ḥaydarī's understanding may be viewed as theologically more accurate, it nonetheless leads to the same implication that anything other than full disclosure should be rejected.

On the other hand, Ṣadr maintains that in theory, it is possible for the Divine Lawgiver – due to Him being the Creator and the Proprietor - to hold a *mukallaf* accountable with or without giving him full disclosure. As a result, Ṣadr upholds that epistemic validity is not necessarily correlated to the essence of full disclosure, rather he argues that it is entirely dependent upon the Divine Lawgiver whether He wishes to make a disclosure epistemologically valid

(*hujja*) or not. In other words, the Divine Lawgiver possesses the mastership to either choose to hold a *mukallaf* accountable or abstain from holding a *mukallaf* accountable, based on the disclosure He explicates. In effect, Ṣadr does not uphold the mainstream position with regards to the primary axiom of the non-validity of *ẓann*; instead he proposes that *ẓann* is as valid as *qaṭʿ*.

2.2.2 The Practical Implications of Ṣadr's Legal Epistemology

It can be suggested that perhaps the key implication of Ṣadr's theoretical theological disposition is that every disclosure from the Divine Lawgiver is epistemologically valid, irrespective of whether it is *qaṭʿī* or *ẓannī*. On the outset, this implies that in light of Ṣadr's analysis, a wider range of evidence – whether they are independent sources of Sharīʿa precepts or hermeneutical methods - can be used in the juristic process of deriving Sharīʿa precepts. However, Ṣadr points out that:

The subject matter of verifiability [or epistemological validity] is everything that can disclose duty, even if the disclosure is conjectural. This is because of the broad parameter of the right of obedience [possessed by the Divine Lawgiver]. However, this right of obedience and verifiability of duty is based on the non-attainment of permission from the [Divine] Master to act in contradiction with the duty. This

[permission is given] by [the Master] issuing serious amnesty (*tarkhīṣ jādd*) that permits acting contrary to the disclosed [duty]¹²².

Therefore, Ṣadr suggests that whilst the default position is that every disclosed duty -whether *qaṭ'ī* or *ẓannī* - is epistemologically valid, since epistemic validity (*hujjiyya*) is not necessarily correlated to the essence of disclosure, the Divine Lawgiver has the right and the choice to either grant or abstain from granting a disclosure with epistemic validity. As a consequence, the Divine Lawgiver may issue an amnesty, which effectively undermines the epistemic validity of a particular disclosure and therefore grants a *mukallaḥ* with the permission to not follow or act in accordance with it.

However, this raises the question of when, and at what level, is it possible for the Divine Lawgiver to issue such amnesty? Ṣadr proposes that in practice, or in the “realm of physical occurrence” (*maqām al-ithbāt*), it is only logically possible for the Divine Lawgiver to issue a *mukallaḥ* with an amnesty that permits him to act in contrary to a duty when that duty is **conjecturally** disclosed. He points out that such amnesty is usually issued by the Divine Lawgiver by way of Him issuing another disclosure, which is epistemologically superior to the conjectural disclosure that the *mukallaḥ* already possesses. Ṣadr points out that the Divine Lawgiver usually issues or discloses such amnesty through the procedural principles (*uṣūl al-*

¹²² See Ṣadr, *Durūs* 3 vol. 3, p. 35

‘*amaliyya*’)¹²³. For example, the principle of exemption (*aṣālat al-barā’a*) enables a *mukallaf* to be ‘exempted’ from performing a duty that has not been fully disclosed to him, whilst the principle of permissibility (*aṣālat al-ibāḥa*) proposes that everything is permissible until it is proven – or fully disclosed – otherwise.

Therefore, if for example, it is hypothetically assumed that a *mukallaf* has conjecture of a Sharī’a precept that states that “it is obligatory to perform supplication (*du‘ā*) each time one witnesses the moon”, then in such a case the *mukallaf* cannot follow this conjectural duty, because the amnesty that is issued by the Divine Lawgiver – i.e. the principle of exemption – will necessarily judge that he is exempted from performing a duty that is not fully disclosed. Therefore, although Ṣadr does not explicitly state this, it can be argued that he clearly holds the epistemic validity of evidence that grants amnesty as being epistemologically superior to conjectural disclosure, and accordingly takes precedence over it.

Meanwhile, Ṣadr points out that it in practice (*maqām al-ithbāt*) it is not logically possible for the Divine Lawgiver to issue a *mukallaf* with amnesty that permits him to act in contrary to a duty that has been revealed to him by **full disclosure** or *qaṭ’*. He maintains that the Divine Lawgiver can only issue an amnesty to act in contrary to full disclosure by issuing a disclosure that is

¹²³ *Ibid*, p. 36

epistemologically superior to full disclosure, and this can only be achieved in one of two ways; by issuing either a *ḥukm al-wāqī 'ī* (real Sharī'a precept) or a *ḥukm al-zāhirī* (apparent Sharī'a precept). The former refers to a precept that discloses knowledge of the 'reality' or that which is in the mind of the Divine Lawgiver, and it is unanimously accepted in contemporary Shiite jurisprudential circles that knowledge of *ḥukm al-wāqī 'ī* can only be attained through evidence that is either itself certainty-bearing (*qaṭ'ī*) or has been substantiated by certainty (i.e. *ẓann al-khāṣ* or *imāra*). On the other hand, the latter refers to those precepts that provide a practical standpoint in circumstances where the *al-ḥukm al-wāqī 'ī* is not known¹²⁴. Again, it is unanimously accepted that knowledge of *ḥukm al-zāhirī* is derived by acting in accordance with the practical principles (*uṣūl al-'amaliyya*). In essence, a *ḥukm al-wāqī 'ī* is deemed as a primary Sharī'a precept, whereas a *ḥukm al-zāhirī* is deemed as a secondary Sharī'a precept, which comes into effect when there is no disclosure of a primary precept.

Therefore, if the Divine Lawgiver was to issue an amnesty to act against full disclosure by issuing a *ḥukm al-wāqī 'ī*, this would effectively imply that the *mukallaf* has been given two fully disclosed duties at the same time whose respective subject matters conflict. For instance, a *mukallaf* may have full disclosure of a *ḥukm al-wāqī 'ī* that establishes the obligation to perform the

¹²⁴ This distinction has also been made in Chapter One under "The Difference Between Substantiated Evidence and Procedural Principles". For a detailed discussion on the differences between *ḥukm al-wāqī 'ī* and *ḥukm al-zāhirī*, see *ibid* pp. 15-17; Muzaḥfar, *Uṣūl al-fiqh* vol. 1, pp. 5-6; Faḍlī, *Mabādī al-uṣūl*, pp. 8-9

Friday congregational prayers (*ṣalāt al-jumu‘ā*). However, if it is then hypothetically assumed that the Divine Lawgiver issues another *ḥukm al-wāqī‘ī* that also fully discloses to the *mukallaf* that it is **not obligatory** to perform the Friday congregational prayers, then effectively the *mukallaf* is faced with two contradicting certainties. On one hand, he has certainty (*qaṭ‘*) of performing a particular duty, but on the other hand he also has certainty of not performing that particular duty. This brings about a logical impossibility, for it is not possible for two contradictory things to be in agreement at the same time e.g. it is logically impossible for something to be both ‘hot’ and ‘cold’ at the same time, or to be both ‘black’ and ‘white’ at the same time. Therefore, Ṣadr proclaims that in practice it is not logically possible for two contradicting disclosures regarding a particular duty to exist at the same time in the mind of the *mukallaf*¹²⁵.

Furthermore, it is important to note that Ṣadr also briefly elucidates that the criterion (*milāk*) ordained by the Divine Lawgiver to make a particular action obligatory is when He ‘loves’ that particular action. Meanwhile, the Divine Lawgiver only prohibits a particular action when He ‘hates’ it. Therefore, if He was to issue two contradicting precepts, whereby one indicates upon an obligation and the other indicates upon a prohibition, this would evidently suggest that there is confusion within the mind of the Divine Lawgiver, for He

¹²⁵ See Ṣadr, *Durūs* 3 vol. 2, pp. 40-42

is deeming the same action to be ‘good’ and ‘bad’ at the same time¹²⁶. Şadr clarifies that this is impossible, as there can never be confusion or contradiction in the mind of the Divine Lawgiver, thereby concluding that it is logically impossible for the Divine Lawgiver to issue an amnesty that undermines the epistemic validity of full disclosure through issuing another full disclosure¹²⁷.

Şadr moves on to consider whether the Divine Lawgiver can issue an amnesty that permits a *mukallaf* to act contrary to full disclosure by issuing a *ḥukm al-ẓāhirī*. However, he concludes that this too is not possible, because a *ḥukm al-ẓāhirī* is only active in cases when the *ḥukm al-wāqīʿī* is not known, and as such it is merely a secondary precept that comes into effect when there is no disclosure of the primary precept¹²⁸. For example, if a *mukallaf* has full disclosure that he is required to perform *ṣalāt* five times a day, then it is not logically possible for him to abide by the procedural principle of exemption (*aṣālat al-barāʾa*), as this principle is only applicable when there is no disclosure of the *al-ḥukm al-wāqīʿī*, or there is doubt or conjecture regarding the disclosure of the *ḥukm al-wāqīʿī*. Therefore, when a *mukallaf* has access to full disclosure, it is logically impossible for *ḥukm al-ẓāhirī* to become active in issuing an amnesty that permits the *mukallaf* to act contrary to it.

¹²⁶ Şadr’s deliberations here are pointed out by Kamāl Ḥaydarī, see Ḥaydarī, *al-Zann*, pp. 33-34

¹²⁷ It must be noted that in the hypothetical situation where a *mukallaf* believes that he has full disclosure of a particular Sharīʿa precept, but then finds that the Divine Lawgiver Himself, or the *maʿšūm*, fully discloses a Sharīʿa precept that is contrary to that particular Sharīʿa precept, it can be claimed that the latter Sharīʿa precept will cancel or abrogate the former Sharīʿa precept. In such an instance, rather than implying that there are two contradicting precepts in the Mind of the Divine Lawgiver, it can be said that the Divine Lawgiver is simply revealing a new precept, because He deems it to be more effective.

¹²⁸ See Şadr, *Durūs* 3 vol. 2, pp. 40-42

Thus, it becomes apparent that although in theory – or in *maqām al-thubūt* - it is possible for the Divine Lawgiver to grant, or abstain from granting, epistemic validity to both full disclosure and conjectural disclosure, in practice – or in *maqām al-ithbāt* - it is logically impossible for the Divine Lawgiver to issue an amnesty (*tarkhīṣ*) which leads to undermining the epistemic validity of the *qaṭʿ* – or full disclosure - that is possessed by the *mukallaf*. Indeed, the only occasion where it is possible for an amnesty to take effect, and undermine the epistemic validity of a disclosure, is when a *mukallaf* possesses *ẓann* – or conjectural disclosure. This implies that even though Ṣadr advocates that it is theoretically possible for *ẓann* to be epistemologically valid, he admits that in practice only *qaṭʿ* can be unequivocally held as epistemologically valid.

Thus, whilst Ṣadr believes that in theory it is possible to utilise a wider range of evidence in the juristic process of deriving Sharīʿa precepts, in practice the Divine Lawgiver has in fact issued an amnesty that undermines the disclosure that is attained from conjectural (*ẓannī*) evidence. This effectively signifies that the only evidence from which it is possible to derive Sharīʿa precepts is that which either fully discloses Sharīʿa precepts, or that which has not been undermined by the amnesty issued by the Divine Lawgiver. Ṣadr summarises the practical implication of his thought in the following statement:

Evidence, if it is certainty-bearing (*qaṭʿī*), is epistemologically valid (*ḥujja*) on the basis of the epistemic validity of certainty (*ḥujjiyyat al-*

qaṭʿ). If this is not the case, but rather if there is certainty-bearing evidence, which establishes [or substantiates] its [i.e. an evidence's] epistemic validity, then [one is required to] act in accordance with it. As for the case in which there is no certainty-bearing evidence, and there is doubt whether the Divine Lawgiver has postulated something to be epistemologically valid, due to there being no evidence for it, then the primary principle (*al-aṣl*) is of non-validity (*ʿadam al-ḥujjiyya*). Therefore, by this we mean that when there is doubt on the epistemic validity [of an evidence], it does not have a **practical** effect (*athar al-ʿamalī*)¹²⁹.

Undoubtedly, the implication of Ṣadr's understanding is reminiscent to the mainstream opinion, which concludes that only certainty – whether in theory or in practice - is epistemologically valid (*ḥujja*), and the epistemic validity of anything other than certainty is required to be postulated by the Divine Lawgiver Himself. As a result of this, the mainstream opinion denies the epistemic validity of a wide range of evidence, such as those which produce *ẓann* per se. Rather, it maintains that the only evidence that can be used in the juristic process of deriving Sharīʿa precepts is that which is certainty-bearing (*qaṭʿī*), or that which has been directly permitted by the Divine Lawgiver.

¹²⁹ *Ibid*, p. 47

2.3 Conclusion

It becomes clear from the discussion in this chapter that the primary axiom of the non-validity of *ẓann* has been unanimously accepted within the post-Anṣārī contemporary discourse of Shiite legal epistemology. Meanwhile, the key differences that exist amongst Shiite *mujtahids* relate to the epistemic foundations upon which this primary axiom has been established.

On one hand, scholars such as Naʿīnī, and seemingly his student Muẓaffar, claim that the primary axiom is theologically or religiously founded. Based on the apparent indication of the textual sources, they have argued that it is clear that the non-validity of *ẓann*, and the prohibition (*ḥurmā*) of following and acting in accordance with it, has been directly postulated by the Divine Lawgiver Himself. Accordingly, these scholars propose that the primary axiom is a necessary aspect of the Shiite theological or religious belief, and consequently if a *mukallaf* is to disobey it by following and acting in accordance with the indication of *ẓann*, then he will sin and can be held accountable. A key implication of this understanding is that a wider range of evidence cannot be used in the juristic process of deriving Sharīʿa precepts, as it is maintained that a particular type of evidence can only be used if the Divine Lawgiver Himself has permitted it. As a result, this signifies that a *mujtahid* can only utilise evidence that is *qaṭʿī* (certainty-bearing), as *qaṭʿī* is intrinsically epistemologically valid (*ḥujja*), or evidence that emanates especial conjecture (*ẓann al-khāṣ*), as the Divine Lawgiver Himself substantiates such evidence.

However, it has been argued that this understanding supports the primary axiom of the non-validity of *ẓann* by relying solely on the apparent indication of the textual sources, which itself is conjectural (*ẓannī*) until it has been proven to be epistemologically valid. Thus, scholars such as Naʿīnī and Muẓaffar have been criticised for providing a circular argument by disproving the epistemic validity of *ẓann* by using *ẓann*.

Alternatively, the mainstream opinion within the Shiite jurisprudential discourse upholds that the primary axiom is actually rationally founded, inasmuch as reason is independently able to discern that apart from certainty (*qaṭʿ*) or full disclosure (*bayān al-tām*), no other evidence can be deemed as epistemologically valid. The mainstream have established this thought based on the theological belief that the Divine Lawgiver is a rational Master, who can only indicate on the characteristics of epistemic validity (*ḥujjiyya*) – i.e. accountability and excusability - when He fully discloses a duty.

The theological standpoint of the mainstream opinion is however criticised by Ṣadr. Ṣadr argues that the concept of epistemic validity is not necessarily correlated to the essence of full disclosure, and alternatively he maintains that in theory it is theologically possible for the Divine Lawgiver to choose whether or not He wishes to postulate epistemic validity to a disclosure. Thus, owing to the principle of pre-occupancy (*aṣālat al-ishtighāl*), Ṣadr proposes that a *mukallaf* is required to follow and act in accordance with every disclosure,

irrespective of whether it is certain or conjectural in nature. Nevertheless, Şadr too eventually concludes on the non-validity of *ẓann*, by claiming that in practice it is impossible for a *mukallaf* to **not** act in accordance with something that he knows with certainty, as it is logically impossible for the Divine Lawgiver to issue an amnesty against the full disclosure that is possessed by the *mukallaf*.

It is apparent that both the mainstream opinion and Şadr have established the primary axiom by providing different rational reasoning and evidence, which is based on two differing theological conceptions of the nature of the Divine Lawgiver. On one hand, the mainstream opinion fully adheres to the *ʿAdliyya* understanding of God, whereby it is impossible for an All Just (*ʿādil*) God to hold a *mukallaf* accountable without giving him full explication or disclosure, thus leading to conclude on the primary axiom of the non-validity of *ẓann*. On the other hand, Şadr demonstrates a strong inclination towards what can be described as a somewhat Ashʿarite understanding of God, whereby he claims that theoretically God **can** hold a *mukallaf* accountable without fully disclosing a duty. However, in practice, Şadr’s understanding also leads to conclude on the primary axiom of the non-validity of *ẓann*.

Therefore, by maintaining the primary axiom through rational reasoning and evidence, the epistemological underpinning maintained within both the post-Anşārī mainstream opinion and Şadr’s opinion effectively holds the same implication as to those who conclude that the primary axiom is a fundamental

aspect of the Shiite theological or religious belief. As a result, the juristic derivation of Sharīʿa precepts is restricted solely to the utilisation of evidence that is either certainty-bearing or has been substantiated and permitted by the Divine Lawgiver Himself.

Thus, although the primary axiom of the non-validity of *ẓann* is unanimously agreed upon, Shiite *mujtahids* propose differing views on whether the primary axiom is an integral part of the Shiite theological belief, or whether it is purely rational. Furthermore, whilst the mainstream position upholds that the primary axiom is rationally established, as opposed to being solely commanded by the Divine Lawgiver, scholars such as Ṣadr have given an alternative rational reasoning to establish the same primary axiom. This indicates that the **rational** foundation that establishes the primary axiom is an area of dispute within contemporary Shiite legal theory, and consequently it can be argued that if alternative reasoning and evidence is sought to conversely disprove the primary axiom - and therefore prove the validity of *ẓann* - then a wider range of evidence could be incorporated in the juristic process of deriving Sharīʿa precepts. However, in order to do this, it is first necessary to analyse the Shiite understanding of full disclosure, or certainty (*qaṭʿ*), as the rational reasoning of both the mainstream and Ṣadr is heavily reliant upon their respective understandings of certainty. Therefore, the next chapter will critically examine how the concept of *qaṭʿ* plays a fundamental role in the discourse of Shiite legal epistemology, and accordingly evaluate whether or not it restricts the juristic derivation of Sharīʿa precepts to only particular types of evidence.

CHAPTER THREE

The Epistemic Validity of Certainty (*qaṭʿ*) in Shiite Legal Epistemology

It has become apparent that the concept of certainty (*qaṭʿ*) plays a pivotal role in the discourse of Shiite legal epistemology. As discussed in the previous chapter, the primary axiom that is unanimously maintained in Shiite legal theory is that of the non-validity of *ẓann*, and Shiite *mujtahids* have predominantly upheld that knowledge of Sharīʿa precepts can **only** be derived from evidence that is certainty-bearing (*qaṭʿī*) or evidence that is conjectural (*ẓannī*) but has been substantiated by certainty-bearing evidence (i.e. *al-ẓann al-khāṣ* or *imāra*). Certainty (*qaṭʿ*) is recognised to differ significantly to conjecture (*ẓann*), as Shiite *mujtahids* unanimously accept that certainty is epistemologically valid (*ḥujja*) in nature, and thus deem it obligatory (*wājib*) upon a *mukallaf* to follow and act in accordance with its indication. Muṣaffar clarifies this understanding by stating:

Indeed, the great Shaykh al-Anṣārī (may God bless his soul) has beautifully elaborated this discussion by justifying the obligatory nature (*wujūb*) of following [or acting in accordance with] certainty (*qaṭʿ*), for indeed after he states that “there is no problem [regarding] the obligatory nature of following certainty and acting upon it as long as it is existent,” he justifies this by saying “for indeed it [i.e. certainty] by

itself is a path [or way] (*ṭarīq*) towards the objective reality (*al-wāqīʿ*), and its path cannot be affirmed or negated by the Divine Lawgiver.¹³⁰

Although Anṣārī expounds that *qaṭʿ* is a *ṭarīq* (path/way) towards the *wāqīʿ* (objective reality), and concludes that there is no doubt regarding the obligatory nature of following or acting in accordance with *qaṭʿ*, he does not explain **how** he has reached this conclusion; thus, post-Anṣārī *mujtahids* have debated at great length in their endeavour to support Anṣārī's claim. Undoubtedly, such explanation is of paramount importance in establishing or proving the epistemic validity (*ḥujjiyya*) of *qaṭʿ*, in order to justify the assumed epistemic validity of certainty-bearing (*qaṭʿī*) evidence that is used to derive Sharīʿa precepts.

This chapter will firstly examine how post-Anṣārī Uṣūlīs have technically defined the meaning of *qaṭʿ*, and critically analyse the existential nature of *qaṭʿ* by specifically considering the post-Anṣārī Uṣūlī understanding of Anṣārī's claim that *qaṭʿ* is a *ṭarīq* towards the *wāqīʿ*. This chapter will then diagnostically examine the explanations provided by post-Anṣārī Uṣūlīs to support Anṣārī's claim that it is obligatory to follow and act in accordance with the indication of *qaṭʿ*.

¹³⁰ Muṣaffar, *uṣūl al-fiqh*, vol. 2, pp. 19-20

A detailed study of *qaṭʿ* will determine whether epistemic validity (*hujjiyya*) is an essential property or a postulated property of *qaṭʿ*. If the former is found to be true, then this necessarily implies that epistemic validity cannot be affirmed to or negated from the essence of *qaṭʿ*. However, if the latter is found to be true, then this necessarily implies that the epistemic validity of *qaṭʿ* **can** either be affirmed or negated by the postulator, which holds a significant implication upon the evidence that is used to derive Sharīʿa precepts. If the property of epistemic validity can be affirmed to or negated from the essence of *qaṭʿ*, then the supposed differences between *qaṭʿ* and *ẓann* would need to be reassessed, and if it was found that in the realm of legislation, *qaṭʿ* does not differ to *ẓann*, then this would undoubtedly impact the range of evidence – whether they are sources of law of hermeneutical methods – that can be used.

3.1 The Definition of *Qaṭʿ* in Legal Theory

The term *qaṭʿ* is derived from the Arabic root word *qa-ṭa-ʿa*, which literally means “to cut” or “to chop off”¹³¹. However, in the context of the jurisprudential discourse, *qaṭʿ* is a technical jargon and its definition differs to its etymological or literal meaning. In Uṣūlī legal theory, *qaṭʿ* is synonymously used with terms such as “*jazm*”, “*yaqīn*”, and “*ilm*”, which collectively define what the Uṣūlī School recognises as *qaṭʿ*.

¹³¹ See Wehr, Hans, A Dictionary of Modern Written Arabic: Arabic = Muʿjam al-Lughā al-ʿArabiyya al-Muʿāṣira (Beirut: Maktabat Lubnān, 1980), pp. 774-778

In *Durūs uṣūl fiqh al-Imāmiyya*, Faḍlī claims that Uṣūlī *mujtahids* have predominantly described *qaṭʿ* in the context of *jazm*¹³². This appears to be true, as after quoting Anṣārī’s statement that “there is no problem [regarding] the obligatory nature of following certainty (*qaṭʿ*) and acting upon it as long as it is existent,” Muḥaffar notes that Anṣārī uses the term “*qaṭʿ*” equivalently to “*jazm*”¹³³. This view is also maintained by Ṣadr, who states that:

The right of obedience [that is possessed by the Divine Lawgiver] is upon those duties (*takālīf*) that are certain (*maḳṭʿu*), and this is what is meant by the accountability of *qaṭʿ*. Also, the right of obedience does not extend to include [those duties] that which a *mukallaḥ* has certitude is not [included] among the duties, [in both cases] he has *jazm*, and this is what is meant by the excusability of *qaṭʿ*.¹³⁴

Ṣadr proposes that when a *mukallaḥ* possesses *qaṭʿ* or *jazm* of a duty, then he is required to follow and act in accordance with it, otherwise he can be held accountable. However, if the *mukallaḥ* does not possess *qaṭʿ* or *jazm* then he is granted with excusability. This clearly establishes Faḍlī’s view, by confirming that when Uṣūlī *mujtahids* discuss *qaṭʿ* they predominantly use it in the context of *jazm*.

¹³² Faḍlī, *Durūs fi Uṣūl Fiqh al-Imāmiyya* vol. 1, p. 260

¹³³ See Muḥaffar, *Uṣūl al-Fiqh* vol. 2, p. 20

¹³⁴ See Ṣadr, *Durūs 3* vol. 2, p. 28

The term *jazm* is described as the psychological state that is acquired by a person when they acquire knowledge (*ilm*) of a thing (i.e. the *jāzim*). This psychological state has the effect of creating an utmost belief that eliminates or “cuts off” any other contradictory possibility¹³⁵. For instance, if a person has knowledge of the proposition that “a whole is greater than a part,” then by possessing such knowledge, they acquire the psychological state of utmost belief that leaves no room for doubt that this proposition is correct, and that anything contrary to it cannot be true. To further explain this in the context of the jurisprudential discourse, Faḍlī notes that:

If there is an explicit evidence, which is utilised by the jurist in the process of deriving a legal precept (*ḥukm*) – whether it is a verse [of the Qur’ān] or a tradition - we say that its indication (*dalāla*) is certainty-bearing (*qaṭ’ī*), and hence for this reason a jurist uses it to derive a legal precept, and [effectively] is led to the state of *jazm*... [Thus] the psychological state that is acquired by a jurist after he has acquired knowledge [of a legal precept] is referred to as *jazm*.¹³⁶

It is clear that in Uṣūlī jurisprudence, *qaṭ’ī* predominantly refers to the psychological state that is attained by a *mujtahid* – or a *mukallaḥ*¹³⁷ - when he

¹³⁵ See Faḍlī, *Durūs I* vol. 1, p. 259; and Muḥaffar, *Uṣūl* vol. 2, p. 20

¹³⁶ Faḍlī, *Durūs I* vol. 1, p. 259

¹³⁷ It must be noted that a *mukallaḥ* does not need to be a *mujtahid* to obtain *qaṭ’ī*; rather a *mukallaḥ* can himself obtain certainty in particular issues. For instance, a *mukallaḥ* can be certain that he has some impurity on his clothes, in which case he is required to wash off the

has acquired knowledge of a Sharī‘a precept, whereby he possesses the utmost belief (*i’tiqād*) that his acquired understanding corresponds to the objective reality, and hence as far as he is concerned no other contradictory possibility is true. However, the contemporary Uṣūlī camp does not essentially uphold that knowledge attained by a *mujtahid* must **necessarily** correspond to the objective reality. Rather, its definition of *qaṭ‘* is much more broad, as it also includes those instances where the knowledge attained by a *mujtahid* does not actually correspond to the objective reality.

Faḍlī elaborates by pointing out that in cases where *qaṭ‘* – or more precisely *jazm* - corresponds to the objective reality, it is understood as “*yaqīn*” (literally: certainty). Accordingly, he defines *yaqīn* as the psychological state that is attained by a *mukallaf* or a *mujtahid* after he has acquired knowledge of something that in actuality does correspond to the objective reality. On the other hand, in cases where *qaṭ‘* does not correspond to the objective reality, it is understood as *jahl al-murakab* (compound ignorance)¹³⁸. In the discourse of logic, the concept of compound ignorance has been described as:

This [compound ignorance] is ignorance about a thing, but combined with ignorance about ones ignorance. Such a person believes that he has knowledge where he does not. Thus, one does not know that one does not know. [Like] all the people with false beliefs would fall into

impurity before he can establish prayers (*ṣalāt*). Therefore, in such a case the *mukallaf* has *qaṭ‘* or *jazm* that it is prohibited for him to pray until he has purified his clothes.

¹³⁸ *Ibid*, pp. 260-261

this category; they believe that they have knowledge about the objective reality of things, but are ignorant in reality. We call this compound ignorance because it is actually two kinds of ignorance joined together: ignorance about reality, and ignorance about ignorance¹³⁹.

Accordingly, based on the Uṣūlī understanding of *qaṭʿ*, compound ignorance is deemed as being the psychological state that is attained by a *mukallaf* after he has acquired knowledge of something that he believes is true, but in actuality does not correspond to the objective reality.

However, when discussing the epistemic validity (*ḥujjiyya*) of *qaṭʿ*, the Uṣūlīs have displayed a tendency to define *qaṭʿ* in the context of *ʿilm* (knowledge)¹⁴⁰ instead of *jazm*. As elucidated by Faḍlī:

Under the title of the epistemic validity of *qaṭʿ* (*ḥujjiyyat al-qaṭʿ*), they [the Uṣūlī *mujtahids*] have utilised *qaṭʿ* in the meaning of *ʿilm* as opposed to *jazm*. We can clarify this from their remarks in this discourse. For instance, the remark of Shaykh al-Anṣārī [which states that] “there is not problem [regarding] the obligatory nature of following *qaṭʿ* and acting in accordance with it, as long as it is existent”

¹³⁹ Muṣaffar, *al-Mantiq*, p. 20

¹⁴⁰ For instance, although Muṣaffar defines *qaṭʿ* as *jazm*, we find that he categorically uses *qaṭʿ* in the context of *ʿilm*, in that he actually titles his chapter that discusses the epistemic validity (*ḥujjiyya*) of *qaṭʿ* as *ḥujjiyyat al-ʿilm al-dhatiyya*, which literally translates as “the essential epistemic validity of *ʿilm*.”

you can see that he intends [to mean] *jazm* from *qaṭʿ*. [However] he completes his remark with the following: “this is because it – i.e. *qaṭʿ* – is a way/path (*tarīq*) towards the reality (*wāqīʿ*)”¹⁴¹.

Faḍlī points out that by claiming, “*qaṭʿ* is a path/way towards the reality,” Anṣārī implies that the concept of *qaṭʿ* is different to *jazm*. Faḍlī explains that this is because if it is accepted that *qaṭʿ* leads one towards the reality, then it cannot be strictly defined as *jazm*, as *jazm* by definition does not always have to correspond to the objective reality. Accordingly, Faḍlī concludes that in attempting to establish the epistemic validity of *qaṭʿ*, the Uṣūlīs have displayed a tendency to define *qaṭʿ* in the context of *ʿilm* as opposed to *jazm*.

Although Faḍlī does not explicitly define what is meant by the term *ʿilm*, he supports his conclusion by highlighting that numerous post-Anṣārī scholars have also maintained such discrepancy in their definition of *qaṭʿ*¹⁴². Among such post-Anṣārī *mujtahids* is Muṣaffar, who Faḍlī directly quotes as stating:

Indeed, the truth of *qaṭʿ* is that it discloses the reality (*inkishāf al-wāqīʿ*), for in actuality it is nothing but enlightening, and there is no bewilderedness in [following and acting in accordance with] it, and

¹⁴¹ Faḍlī, *Durūs* vol. 1, p. 261

¹⁴² Faḍlī supports this by quoting Sayyid Khūʾī, who explicitly states: “In summary: [obtaining] *qaṭʿ* of a precept (*ḥukm*) is nothing but the disclosure of the precept. Indeed, that what is implied from this is *ʿilm*, for indeed *ʿilm* is something that corresponds to the *ḥukm* as it discloses it. As for *jazm*, indeed it is a psychological state (or belief) and a truth-value cannot be assigned to its disclosure.” See *ibid*; also see Khūʾī, Abū Qāsim. *Miṣbāḥ al-uṣūl* 3 vols. Edited by Sayyid Muḥammad Surūr al-Wāiʿ (Qum: Maktabat al-Dāwarī, 1992) vol. 2, p. 9

there is no possibility of erring by associating with it. Accordingly, only *‘ilm* is light by its essence and light for other things, and thus it by its very essence [has the ability to] disclose (*inkishāf*)¹⁴³.

This highlights that Muḥaffar defines *‘ilm* as having the ability to disclose the objective reality, and as Faḍlī does not contest this view, it is arguable that he too concurs with Muḥaffar’s definition of *‘ilm*. It is important to note that Muḥaffar clearly equates *qaṭ’* with *‘ilm*, as he proposes that both *qaṭ’* and *‘ilm* share the property of being enlightening and thus of disclosing the objective reality. This establishes that Muḥaffar does not consider that *qaṭ’* leads to compound ignorance, as the latter does not have the ability to reveal the objective reality. As stated by Muḥaffar in *al-Manṭiq*:

There are those that contend that compound ignorance is actually a kind of knowledge (*‘ilm*), since it is predicated upon some sort of belief, even though it is a belief that is in contrast with reality. But when we analyse knowledge in a refined fashion, we will see the distance these claims have from reality, and that such a claim is itself a kind of compound ignorance. The meaning of [our definition of knowledge] “the presence of something’s image in the intellect” is that there is

¹⁴³*Ibid.*; also see Muḥaffar, *Uṣūl al-Fiqh* vol. 2, p. 21

present within the mind an image that is *the same* as the thing it represents¹⁴⁴.

Muḏaffar maintains that whilst *‘ilm* possesses the property of being “enlightening”, compound ignorance can be described as possessing the property of being “bewildering,” and thus the latter is unable to disclose the objective reality. This discussion highlights that there is ambiguity in Muḏaffar’s thought, as although he initially defines *qaṭ’* as being synonymous with *jazm*, he later describes *qaṭ’* as being equivalent to *‘ilm*. Thus, despite proposing that the definition of *qaṭ’* includes both *yaqīn* and *jahl al-murakab*, Muḏaffar then advocates that *qaṭ’* only results in *yaqīn*.

In essence, this discrepancy exists amongst the majority of contemporary Uṣūlīs, as on one hand *qaṭ’* is seen as being synonymous to *jazm*, however, when the epistemic validity of *qaṭ’* is considered, it is then defined within the context of *‘ilm*. It may be suggested that such discrepancy is due to the onslaught targeted towards the Uṣūlīs by the Akhbārīs. As elucidated in Chapter One, the Akhbārīs were critical of the Uṣūlī acceptance of *ẓann* in the juristic process of deriving Sharī‘a precepts, and in order to justify the Uṣūlī heritage, post-Anṣārī Uṣūlī legal theory contains a number of references to the Akhbārī School in an attempt to clarify the misconceptions that exist against them. Consequently, it is arguable that the purpose of post-Anṣārī legal theory

¹⁴⁴ See Muḏaffar, *al-Manṭiq*, p.20

has been two-fold, as it not only intends to provide principles for a *mujtahid* in his derivation of Sharī'a precepts, but it also aims to clarify the misconceptions held by the Akhbārīs.

The lexical order of these two purposes is undoubtedly beyond the scope of this study; however it is apparent that the Akhbārī School has had a major influence on the development of post-Anṣārī Uṣūlī legal theory. The Uṣūlīs are aware that by legitimising the epistemic validity of compound ignorance, there exists the risk of also legitimising the epistemic validity of *ẓann* through compound ignorance, thus in order to avoid this, they have defined *qaṭ'* as being synonymous to *'ilm* when discussing its epistemic validity. Consequently, the Uṣūlīs conclude that only *'ilm* is epistemologically valid, and that *ẓann* can only be used in the juristic process of deriving Sharī'a precepts when it is substantiated by *'ilm*. Through defining *qaṭ'* as *'ilm*, the Uṣūlīs have maintained that their legal theory is in line with the Shiite juristic heritage, and as a result they too adhere to the primary axiom of the non-validity of *ẓann*¹⁴⁵.

Faḍlī concludes that:

¹⁴⁵ It must be noted that in support of this argument, it is found that Anṣārī in fact begins his treaties on legal theory in *Farāi'd al-uṣūl* with a discussion on *'ilm*. He does not adhere to the statuesque conventional writing on *uṣūl al-fiqh*, which usually begin with the discourse of *mabāḥith al-alfāz*, rather from the outset Anṣārī defines and explains the Uṣūlī concept of *'ilm* and *qaṭ'*, see Anṣārī, *Farāi'd al-uṣūl* vol. 1, pp. 4-38

We understand that their intention [i.e. the intention of the Uṣūlī *mujtahids*] by certainty-bearing indication (*dalāla al-qaṭʿī*) is the indication that gives us *ʿilm* about the reality of a thing, inasmuch as we acquire *yaqīn* from [following and acting in accordance with] it¹⁴⁶.

Therefore, it is clear that the Uṣūlīs maintain a corresponding association between *qaṭʿ*, *ʿilm* and *yaqīn*. As such, whenever a *mujtahid* has *qaṭʿ* (or certainty) regarding a Sharīʿa precept, he necessarily has *ʿilm* (or knowledge) of that precept, and likewise when he has *ʿilm* of a Sharīʿa precept, he necessarily has *qaṭʿ* regarding that precept. In such instances, the *ʿilm* or *qaṭʿ* that is possessed by the *mujtahid* is at the level of *yaqīn*, inasmuch as it accurately corresponds to that which is in the objective reality.

3.2 The Nature of Qaṭʿ

3.2.1 The Essential Properties of *Kashfiyya* and *Tarīqiyya*

The Uṣūlīs describe *qaṭʿ* synonymously with *ʿilm* or *yaqīn*, and as such the nature of *qaṭʿ* is described as being the same as the nature of *ʿilm* and *yaqīn*. This understanding is clearly expounded by Muḏaffar, who states that *qaṭʿ*, like *ʿilm*, possesses the essential property of *kashfiyya* i.e. the property of disclosing the objective reality (*wāqīʿī*). However, this view is not explicitly maintained

¹⁴⁶ Faḏlī, *Durūs I* vol. 1, p. 268

by Anṣārī, as from his statement that “*qaṭʿ* is a *ṭarīq* (path/means) towards the objective reality,” it is possible to elucidate that this does not necessarily imply that *qaṭʿ* **always** leads to the objective reality, and by following and acting in accordance with *qaṭʿ* there always exists the possibility of erring.

In order to clarify Anṣārī’s explanation, his contemporaries have argued that when Anṣārī claimed that *qaṭʿ* is a path/means towards the *wāqīʿ*, he meant that it is a “reflective” path/means, inasmuch as *qaṭʿ* has the property of reflecting the objective reality. In other words, just as a mirror accurately reflects an objects’ reflection, so does *qaṭʿ* accurately reflect the objective reality, and thus by following and acting in accordance with it there is no possibility of erring¹⁴⁷. Therefore, it is claimed that *qaṭʿ* has the property of *kashfiyya* i.e. it discloses the objective reality, and the property of *ṭarīqiyya* i.e. it is a reflective means towards the objective reality. However, it remains to be established whether *kashfiyya* and *ṭarīqiyya* are properties that are essential (*dhātī*) to the nature of *qaṭʿ*, or whether they are necessary correlatives to the essence (*lawāzim al-dhat*) of *qaṭʿ*.

If the properties of *kashfiyya* and *ṭarīqiyya* are deemed to be essential properties of *qaṭʿ* then they establish or define the very existence or essence of *qaṭʿ*. For example, in the discourse of metaphysics in Muslim philosophy, a

¹⁴⁷ This view is unanimously concurred by the Uṣūlīs, see Ḥaydarī, Kamāl. *Uṣūl al-istinbāt al-fiqhī: al-Qaṭʿ dirāsāt fi ḥujjiyyati-hi wa aqsāmi-hi wa aḥkāmī-hi* (Qum: Dār al-Farāqīd, 2006), pp. 110-112; also see Iṣfahānī, Muḥammad Ḥusayn al-Gharawī. *Nihāyat al-dirāya fi sharḥ al-Kifāya* 6 vols. (Qum: Mu’assasat Āl-Bayt, 1995), vol. 3, p. 18

human being (*insān*) is defined as a rational animal (*al-ḥaywān al-nāṭiq*), inasmuch as the properties of *ḥaywāniyya* (animality) and *nāṭiqiyya* (rationality) are essential properties that establish the actual existence of a human being. Therefore, when a human being is created, the properties of *ḥaywāniyya* and *nāṭiqiyya* are inevitably created with it, in the sense that the essence of a human being can never be devoid of these properties, for if any one of the two essential properties were not to exist then a human being qua human being would not be defined as a human being qua human being¹⁴⁸. Similarly, when *qaṭʿ* is created, so are its essential properties of *kashfiyya* and *ṭarīqiyya*, in the sense that it can never be devoid of these properties, for if it was, then *qaṭʿ* qua *qaṭʿ* could not be defined as *qaṭʿ* qua *qaṭʿ*.

On the other hand, if the properties of *kashfiyya* and *ṭarīqiyya* are established instead to be necessary correlatives to the essence of *qaṭʿ*, then although these properties necessarily exist whenever *qaṭʿ* exists, they do not establish the very existence or essence of *qaṭʿ*. For instance, the property of laughter is something that necessarily exists when a human being exists, however it does not establish the existence or the essence of a human being, and therefore as long as a human being exists, its property of laughter accompanies his existence, and the two never separate. Another example is the relationship between “evenness” and the number “four”. As long as the “four” exists, so does its property of being “even,” as the latter is not something that can be separated

¹⁴⁸ See Ṭabāṭabāʾī, Sayyid Muḥammad Ḥusayn. *Bidāyat al-Ḥikma* (Qum: Muʾassasat al-Nashar al-Islāmī, 2004), pp. 76-77

from the existence of the essence of “four,” – however, it is not something which establishes the existence or the essence of “four.” In the same way, although the properties of *kashfiyya* and *ṭarīqiyya* are necessary correlatives of *qaṭʿ*, they are other than *qaṭʿ*.

The general consensus amongst the Uṣūlīs is that the properties of *kashfiyya* and *ṭarīqiyya* are essential properties of *qaṭʿ*, and thus establish and define its existence and essence¹⁴⁹. Therefore, as soon as *qaṭʿ* exists, its essential properties of disclosing the objective reality and being a reflective means towards the objective reality also exist. However, irrespective of whether *kashfiyya* and *ṭarīqiyya* are considered as being essential properties of *qaṭʿ*, or as being necessary correlatives to the essence of *qaṭʿ*, it is apparent that these properties are not treated as being **postulated** to the nature of *qaṭʿ*. This signifies that the nature of *qaṭʿ* wholly differs to the nature of *ẓann*, as based on the mainstream Uṣūlī understanding, the primary axiom of the non-validity of *ẓann* qua *ẓann* can be retracted by the explicit consent of the Divine Lawgiver. In doing this, Divine Lawgiver effectively postulates or adds the properties of *kashfiyya* and *ṭarīqiyya* to *ẓann*, which transforms it into especial conjecture (*ẓann al-khāṣ*) that can be utilised in the juristic derivation of Sharīʿa precepts.

Therefore, as the properties of *kashfiyya* and *ṭarīqiyya* are held to be amongst the essentialities of *qaṭʿ*, the Divine Lawgiver cannot postulate or negate them,

¹⁴⁹ This is explicitly maintained by the Uṣūlīs, for instance see Ḥaydarī, *al-Qaṭʿ*, pp. 112-114; Iṣfahānī, *Nihāyat al-dirāya*, vol. 3, p. 18; Muṣaffar, *Uṣūl al-Fiqh*, vol. 2, pp. 19- 23

for if He was to do this then *qaṭʿ* could not be defined as *qaṭʿ* qua *qaṭʿ*. However, it is arguable that in the realm of legislation (*ʿālam al-tashrīʿī*), God being the Omnipotent Divine Lawgiver possesses the absolute authority to exploit the principles or laws of legislation, irrespective of how such laws are created in the realm of creation (*ʿālam al-takwīnī*). Accordingly, although it is accepted by the Uṣūlīs that, in the realm of creation, *qaṭʿ* is created with its essential properties of *kashfiyya* and *ṭarīqiyya*, which cannot be negated from itself, in the realm of legislation, it is possible to say that God – or the Divine Lawgiver - has the authority to negate these essential properties from the existence of *qaṭʿ*. Thus, in the realm of legislation, the nature of *qaṭʿ* can be analogised to the nature of *ẓann*, whereby the Divine Lawgiver has the authority to postulate the properties of *kashfiyya* and *ṭarīqiyya* to *ẓann*. In essence, it is arguable that just as the Uṣūlīs accept that the Divine Lawgiver has the right to postulate the properties of *kashfiyya* and *ṭarīqiyya* to *ẓann* in the realm of legislation, He too has the right to negate these properties from *qaṭʿ* in the realm of legislation.

However, in response to this argument, Muṣaffar advocates that even in the realm of legislation, it is not possible for the Divine Lawgiver to either postulate or negate the properties of *kashfiyya* and *ṭarīqiyya* from *qaṭʿ*. Muṣaffar applies the philosophical typology between simple creation (*al-jaʿl al-basīṭ*) and composite creation (*al-jaʿl al-taʿlīfī*)¹⁵⁰, where the former refers to

¹⁵⁰ Muṣaffar, *Uṣūl al-fiqh* vol. 2, pp. 21-23

an existence that is only created with its essential properties, whilst the latter refers to an existence that is created as a compound, insofar as it includes both its essential properties and its accidental properties¹⁵¹. He claims that *qaṭʿ* is a simple creation, which implies that in the realm of legislation, it is created with its essential properties of *kashfiyya* and *ṭarīqiyya*. On the other hand, Muḥaffar categorises *ẓann* - or more specifically substantiated *ẓann*, or *ẓann al-khāṣ* - as a composite creation, which signifies that it is created with its essential properties **and** its accidental properties of *kashfiyya* and *ṭarīqiyya*. Muḥaffar concludes that in the realm of legislation, the Divine Lawgiver does not possess the authority to postulate or negate the essential properties from an existence; rather, the parameters of His authority are limited to modifying Sharīʿa precepts¹⁵². Thus for instance, it is logically possible for the Divine Lawgiver to prohibit a *mukallaf* from following and acting in accordance with the *qaṭʿ* he has. However, it is not logically possible for Him to negate the properties of *kashfiyya* and *ṭarīqiyya* from the essence of *qaṭʿ*.

At this juncture, it must be clarified that the Uṣūlīs do not propose that God cannot **create** *qaṭʿ* in the mind of a human being, they simply concur that He cannot separate it from its essential properties of *kashfiyya* and *ṭarīqiyya*. The Uṣūlī understanding of the nature of *qaṭʿ* is summarised by Iṣfahānī, who states that:

¹⁵¹ See Ṭabāṭabāʿī, *Bidāyat al-Hikma*, pp. 111-112 and pp. 133-135

¹⁵² Muḥaffar, *Uṣūl al-fiqh* vol. 2, p. 23

Qaṭ' is an illuminating pure reality whose nature is *ṭarīqiyya*, in that it reflects the objective reality. It is not that *qaṭ'* is one thing, and that its necessary correlatives [of *kashfiyya* and *ṭarīqiyya*] are another thing, rather *kashfiyya* and *ṭarīqiyya* are among the essential properties of *qaṭ'* itself¹⁵³.

However, this understanding is problematic, as if it is supposed that the properties of *kashfiyya* and *ṭarīqiyya* are essential to the nature of *qaṭ'*, this necessarily implies that *qaṭ'* **always** discloses and reflects the objective reality accurately. However, it is evident that the knowledge (*ilm*) or *qaṭ'* that is possessed by an individual is not always accurate, inasmuch as it does not necessarily always correspond to the objective reality, due to the existence of compound ignorance (*jahl al-murakab*). Therefore, how can an individual who possesses *qaṭ'* know that his or her *qaṭ'* accurately discloses and reflects the objective reality? In *Tahdhīb al-Uṣūl*, Sayyid Rūḥallāh Khumaynī (d.1409/1989) describes this uncertainty by stating:

Ṭarīqiyya and *kashfiyya* are believed to be the essentialities of *qaṭ'*, not through the postulation of a postulator, because it is not possible to have a composite creation between an object and its essentialities, for when an object is created so are its essentialities... However, we find that *qaṭ'* is at times accurate and at other times inaccurate. If this is the

¹⁵³Iṣfahānī, *Nihāyat al-dirāya* vol. 3, p. 18

case, then how can you say that *kashfiyya* and *ṭarīqiyya* are from the essence *qaṭʿ*, or are the necessary correlatives of *qaṭʿ*? Therefore, [this shows that] *ṭarīqiyya* and *kashfiyya* are not *qaṭʿ*; neither are they the necessary correlatives of *qaṭʿ*. This is simply a convolution of mixing [the discourses of] logic and philosophy within the realm of [the discourse of] *uṣūl*¹⁵⁴.

The epistemological criticism that is posed by scholars such as Khumaynī is not explicitly answered in the major works of post-Anṣārī Uṣūlīs¹⁵⁵, as the majority of Uṣūlīs have simply referred to the discourses of logic and philosophy to elaborate on what is meant by Anṣārī's statement that *qaṭʿ* is “a *ṭarīq* to the *wāqiʿ*, and its *ṭarīq* cannot be affirmed not negated by the Divine Lawgiver.” As such, they have not epistemologically explained **how** *qaṭʿ* is always accurate in disclosing the objective reality or the external world. Accordingly, the next section will critically examine how Kamāl Ḥaydarī¹⁵⁶, who too agrees that the properties of *kashfiyya* and *ṭarīqiyya* are among the essentialities of *qaṭʿ*, responds to the criticism posed by Khumaynī in his book entitled *al-Qaṭʿ*. This analysis will effectively highlight the key epistemological presumption(s) of contemporary Uṣūlī legal theory.

3.2.2 The Epistemic Justification for the Essential Properties of *Qaṭʿ*

¹⁵⁴ Khumaynī, Sayyid Rūḥallāh. *Tahdhīb al-uṣūl* 3 vols. Edited by Shaykh Jaʿfar Subḥānī (Qum: Muʾassasat Ismāʿīlīyān, n.d.) vol. 2, pp. 84-85

¹⁵⁵ Similar criticism is also found by Khūʿī, see Khūʿī, *Miṣbāḥ al-uṣūl*, vol. 2 p. 5

¹⁵⁶ As mentioned in the previous chapter, Kamāl Ḥaydarī was one of the most prolific students of al-Ṣadr, and is currently deemed as one of the most prominent seminary teachers of *Uṣūl al-Fiqh*.

In the Shiite tradition, the discourse on epistemology, or the theory of knowledge (*naẓariyyat al-ma'rifa*), is not specifically studied within traditional Shiite seminary curricula¹⁵⁷. Rather, epistemology is parenthetically studied within the discipline of philosophy (*al-falsafa*) - or more specifically Muslim metaphysics - and the discipline of logic (*'ilm al-manṭiq*). However, prior to discussing the epistemic presumptions within Uṣūlī legal epistemology, it is important to note that both philosophy and logic were originally inspired by Greek philosophy during the Eight Century-Golden Age of the Abbasid Caliphate. The introduction of the Greek thought within the bounds of Islam was at first dismissed by conservative Muslim theologians and legal scholars, as they believed it to be malicious and unnecessary. However, as Fakhry elucidates:

By the middle of the eighth century ad the picture had changed somewhat, with the appearance of the rationalist theologians of Islam known as the Mu'tazilites, who were thoroughly influenced by the methods of discourse or dialectic favoured by the Muslim philosophers. Of those philosophers, the two outstanding figures of the ninth and tenth centuries were al-Kindi and al-Razi, who hailed Greek philosophy as a form of liberation from the shackles of dogma or blind imitation (*taqlid*). For al-Kindi, the goals of philosophy are perfectly compatible

¹⁵⁷ For the common curriculum taught at Shiite religious seminaries see Mallat, *The renewal of Islamic law*, pp. 39-43

with those of religion, and, for al-Razi, philosophy was the highest expression of man's intellectual ambitions and the noblest achievement of the noble people, the Greeks, who were unsurpassed in their quest for wisdom (*hikma*)¹⁵⁸.

As noted in Chapter One, the influence of the Greek thought within the folds of Muslim legal theory was primarily encouraged by Ghazālī, who in his *al-Mustasfā* wrote a lengthy introduction to the Aristotelian discourse on formal logic and presented the traditional jurisprudential arguments of legal theory in a logical manner. As a result of Ghazālī's endeavour, it is found that the Shiites too began to incorporate the formal logic of Aristotle in their method of jurisprudential argumentation, and indeed this integration of logic and philosophy within the discourse of Uṣūlī legal theory has continued until the present day. Traditional Shiite seminaries require the completion of the intermediary discourses of logic and philosophy as necessary prerequisites before one can advance on to undertake the discourse of legal theory.

Within the discourses of Muslim logic and philosophy, knowledge is described as “the grasping of immaterial forms, natures, essence or realities of things¹⁵⁹”, and in Muslim philosophy, it is divided into *‘ilm al-ḥuṣūlī* (acquired knowledge) and *‘ilm al-ḥuḍūrī* (present knowledge). The former refers to

¹⁵⁸ See Fakhry, Majid. “Greek Philosophy” in Craig, Edward (ed.) *Routledge Encyclopedia of Philosophy*, 10 vols. (London: Routledge, 1998), p. 3230

¹⁵⁹ See Inati, Shams C. “Epistemology in Islamic Philosophy” in Craig, Edward (ed.) *Routledge Encyclopedia of Philosophy*, 10 vols. (London: Routledge, 1998), p. 2502

knowledge of the external world or the objective reality that is cognised by the mind, where the mind acquires or captures the concept or the immaterial form (*ṣūra*) of an external thing without its external material properties. Meanwhile, the latter refers to knowledge that is not acquired, but rather is already present in the mind - for instance, the knowledge that “I am” is not acquired or captured by the mind through cognising the external world, rather it is always present, for “one cannot fail to be conscious of his own self in any circumstance, in solitude or in company, in sleep or in wakefulness, or in any other sense¹⁶⁰.” In light of this, *‘ilm al-ḥuḍurī* is recognised as essential knowledge, and since it is essential it can never be inaccurate. On the other hand, as *‘ilm al-ḥuṣūlī* is acquired, it is described as accidental in nature as opposed to essential.

Furthermore, following the tradition of the Greek thought, Muslim philosophers and logicians have also divided the knowledge that is possessed in the human mind into conception (*taṣawwur*) and assent (*taṣdīq*). The former refers to the concepts or immaterial forms that are apprehended by the mind, without the mind giving a judgment on their objective reality, whilst the latter refers to the conceptions and immaterial forms that are apprehended by the mind, where the mind – or the soul – gives a judgment, or assents, to their objective reality¹⁶¹. This is further explained in the following extract:

¹⁶⁰ See al-Ṭabāṭabā‘ī, *Bidāyat al-ḥikma*, pp. 173-176 for the primary division of knowledge into *‘ilm al-ḥuṣūlī* and *‘ilm al-ḥuḍurī*.

¹⁶¹ For more information on the logical division of *‘ilm* into *taṣawwur* and *taṣdīq* see Muḥaffar, *al-Manṭiq*, pp. 13-19

Conceptualization [*taṣawwur*] is the act of the mind by which it grasps singular (though not necessarily simple) essences or quiddities, such as the concept of 'human being'. Assent [*taṣdīq*], by contrast, is the act of the intellect whereby it makes a determinate judgment to which a truth-value can be assigned; in fact, conceptualization is defined in Islamic philosophy principally by contrast with assent. Thus, any act of knowledge that does not entail the assignment of a truth-value to the proposition that corresponds to it will be an act of conceptualization alone, not assent. More specifically, the Islamic philosophers link assent to the affirmation or denial of the existence of the thing conceived, or to the judgment that it exists in a certain state, with certain properties. Thus, assent presupposes some prior act of conceptualization, although conceptualization does not presuppose assent¹⁶².

In light of the above distinctions, Ḥaydarī points out that knowledge of the objective reality (*wāqiʿ*), or that which is in the Mind of the Divine Lawgiver, is something that is accidental, inasmuch as it is **not** something that is present in the mind, rather it is knowledge that is acquired (*ʿilm al-ḥuṣūlī*)¹⁶³. As a result, Ḥaydarī suggests that this knowledge can only be apportioned with

¹⁶² See Black, Deborah L. "Logic in Islamic Philosophy" in Craig, Edward (ed.) *Routledge Encyclopedia of Philosophy*, 10 vols. (London: Routledge, 1998) pp. 4874-4875

¹⁶³ Ḥaydarī, *al-Qaṭʿ*, p. 114

accuracy or inaccuracy at the level of *taṣdīq* (assent) and not at the level of *taṣawwur* (conception)¹⁶⁴.

Ḥaydarī hypothetically exemplifies that if for instance your mind was to apprehend the proposition “a thief entered into the house,” then it does this due to sense perception, inasmuch as the sensory organs send a message to the mind and the mind cognises and apprehends the simple concept or the immaterial form of a thief – which is the subject (*mawḍūʿ*) of the proposition – and the simple concept or immaterial form of “entering into the house” – which is the predicate (*maḥmūl*) of the proposition – and conjoins both the subject and the predicate together. Ḥaydarī explains that in such an instance, it is **not** possible for the mind to apportion a truth-value at the level of cognition and apprehension to the objects of sense perception i.e. the subject and the predicate, because both the subject and the predicate are merely simple concepts, and as discussed, a concept is always free from judgment. Therefore, he suggests that the question of assigning a truth-value only arises when the mind assents or assigns a judgment to these concepts. However, Ḥaydarī also points out that since the individual forms of the subject and the predicate are present in the mind with their full existence, they are things that the mind has essential knowledge (*ʿilm al-ḥuḍūrī*) of, and since it has essential knowledge of both the subject and the predicate, neither of them can ever be inaccurate.

¹⁶⁴ *Ibid* pp. 114-119

Ḥaydarī thus advocates that the task of assigning a truth-value can only occur in cases where knowledge is acquired from the external world or the objective reality i.e. in cases of *‘ilm al-ḥuṣūlī*. Since both the subject and the predicate are individually present in the mind they cannot, in themselves, be inaccurate. Therefore, the only way to assign them with a truth-value is to examine the whole proposition “a thief entered into the house” with all its segments together, and to compare it to the objective reality.

After doing so, if it is hypothetically supposed that in the objective reality the proposition “a thief entered into the house” is inaccurate, rather the accurate proposition is “your brother entered into the house,” then Ḥaydarī suggests that in such a case the mind would still believe in the former original proposition. Here, it is found that the mistake or inaccuracy that occurs in the mind specifically relates to the subject as opposed to the predicate, as the mind has mistaken the “brother” to be the “thief”¹⁶⁵. Ḥaydarī explains that this inaccuracy may occur because the mind fails to differentiate between the attributes of the “brother” and the attributes of the “thief,” because they are exactly the same. In other words, both the “brother” and “thief” are for instance of the same height and built, are wearing the same clothes, have the same style

¹⁶⁵ It must be noted that the inaccuracy cannot only come in the mind with regards to the subject (*mawḍūʿ*). It is possible for one to be mistaken about the predicate (*maḥmūl*) as well. For instance, in the example of “a thief entered the house”, in such a case a person can make a mistake with regards to the predicate, and thus conclude that “a thief entered the house,” whereas in the objective reality the true proposition is that “a thief passed by the house.” Therefore, it can be seen that the subject in this case is accurate, rather it is the predicate that is mistaken.

of entering the house etc. Thus, owing to the fact that they both share the same attributes, the mind is led to giving an inaccurate judgment¹⁶⁶.

Therefore, this establishes that at the level of conception, the mind has essential knowledge of the attributes of the subject, and this knowledge corresponds to the objective reality. In other words, the sensory organs perceive the objective reality accurately and the mind cognises and apprehends the perceived concepts and the immaterial forms of the objective reality accurately, until its knowledge is present in the mind. Once the knowledge is present in the mind, the mind accurately reflects this knowledge to the objective reality¹⁶⁷. Therefore, the mind has accurate knowledge of the subject, inasmuch as the attributes of the “thief” and the attributes of the “brother,” are both the same.

However, although the concept of the subject is accurate, this does not mean that truth-value can be assigned to it, because at the level of conception, a subject qua subject – or even a predicate qua predicate – cannot be assigned with a truth-value. For instance, in this example the subject in the original proposition is a “thief,” and a “thief” qua “thief” cannot be assigned with a

¹⁶⁶ See Ḥaydarī, *al-Qaṭʿ*, pp. 119-123 for his full discussion.

¹⁶⁷ The accuracy of sense perception in reflecting and disclosing the objective reality is maintained by Ghazālī who expounds that “there is no meaning to knowledge except that of it being and image (*mithāl*) that arrives in the soul, which conforms to that which is an image in sense perception, namely, the object known” see Rosenthal, Franz. *Knowledge Triumphant: The Concept of Knowledge in Medieval Islam* (Leiden: Brill, 2007), p.65. Moreover, Rosenthal points out that the accuracy or the infallibility of sense perception in disclosing the objective reality was widely maintained in the medieval discourse of epistemology, see *ibid*, pp. 208-239

truth-value i.e. one cannot say a “thief” corresponds to the objective reality or not, for it simply is just a concept. Instead, truth-value can only be assigned to a concept at the level of assent, in cases where the mind wishes to assent whether the subject – or even the predicate - is corresponding to the reality or not. However, as mentioned above, this is only possible to do when the subject is examined together with the predicate within the whole proposition.

Therefore, in light of the aforementioned hypothetical situation, Ḥaydarī explains that at the level of assent when the mind judges the whole proposition, it inaccurately judges the subject to be something other than what it actually is in the objective reality. In essence, at the level of conception, the mind accurately apprehends and cognises the subject qua subject. However, at the level of assent, when the mind judges the subject within the proposition, the subject is inaccurate, as it does not actually correspond to the subject in the external world or in the objective reality.

On the basis of this understanding, Ḥaydarī responds to the criticism of the likes of Khumaynī towards the mainstream opinion, by defending that *qaṭʿ* does indeed essentially disclose and reflect that which is in the *wāqīʿ*. He argues that those who dispute that the properties of *kashfiyya* and *ṭarīqiyya* are not essential properties of *qaṭʿ* because *qaṭʿ* is not always accurate are mistaken, because they fail to distinguish between *qaṭʿ* at the level of concept and *qaṭʿ* at the level of assent. In accordance with Ḥaydarī, when the mainstream conclude that *qaṭʿ* or *ʿilm* discloses and reflects the *wāqīʿ*, they do

so at the level of conception, inasmuch as the immaterial form of the subject and the immaterial form of the predicate are individually cognised and apprehended by the mind from a *qaṭʿ* (certainty-bearing) proposition, and since the immaterial form of the subject and the predicate is present in the mind, it is accurate; thus, at a conceptual level *qaṭʿ* or *ʿilm* always accurately reflects the objective reality. The mistake or inaccuracy can only potentially occur at the level of assent, when the mind's faculty of imagination overpowers its faculty of sense perception, and as a result judges either the subject or the predicate of the *qaṭʿ* proposition to be something other than it actually is in the objective reality. Therefore, in essence, Ḥaydarī maintains the mainstream conviction that the properties of *kashfiyya* and *ṭarīqiyya* are essential properties of *qaṭʿ*, and supports the fact that *qaṭʿ* is always accurate in disclosing and reflecting the objective reality at the level of conception.

3.2.3 The Epistemic Presumption of Uṣūlī Legal Theory

It becomes apparent from Ḥaydarī's argument that his underlying or fundamental epistemic presumption is based on the accuracy of sense perception, as the first step towards knowing something that is outside the mind, or in the external world, is through the sensory organs¹⁶⁸. However, a major criticism towards this understanding relates to the assumed accuracy of

¹⁶⁸ See Ḥaydarī, p. 117

the mind's faculty of sense perception. For example, if one is to view a stick that is half-submerged in water, it visually appears to be bent. However, when the stick is outside the water, it visually appears to be straight. Therefore, how can one be sure that when the stick is inside the water it is not really bent? Suppose even if it is assumed that it is known that when the stick is outside the water it is not really bent, how can seeing a straight stick outside the water provide one with good reason for believing that when it is inside the water it is not really bent? One possible answer to these questions is that the sense perception of vision alone is not sufficient in reflecting the external world, and thus one has to also rely on the information obtained from other senses. Suppose then that a person asserts that his belief in declaring the stick to be straight is because he can feel it to be straight, one may question why the sense perception of touching is given priority over the sense perception of vision? Moreover, the sense perception of touching can also be inaccurate at times - for example, if a person is to chill one hand and warm the other hand, and then place both hands in a tub of lukewarm water, the water would feel warm to the cold hand and cold to the warm hand¹⁶⁹.

These examples demonstrate that the mind's faculty of sense perception can at times be deceiving, and as such it cannot be assumed to be accurate at all times. This in turn suggests that one's knowledge of the external world or the objective reality can be inaccurate, which necessarily implies that it is possible

¹⁶⁹ These example are clearly expounded by Austin, John L. "Sense and Sensibilia" in Huemer, M (ed.) *Epistemology: Contemporary Readings* (UK: Routledge, 2002), pp. 76-77

to be inaccurate not only at the level of assent, but also at the level of conception.

However, it is important to note that if one concludes that sense perception cannot be relied on, and as a result it is not possible to obtain knowledge – or *qaṭʿ* – of the objective reality, then in Muslim philosophy, such a person is described as a sophist. Indeed, Sayyid Muḥammad Ḥusayn Ṭabāṭabāʾī (d.1981), who is recognised within Shiʿite Uṣūlī circles as a renowned philosopher for his extensive commentary on the magnum opus of the transcendental theosophy of Mullā Ṣadrā¹⁷⁰, comments in his *Bidāyat al-ḥikma*:

Should the sophist who denies the possibility of knowledge and is sceptical of everything admit to be sceptic, it means that he admits the possibility of at least some kind of knowledge and thereby affirms the principle of contradiction. Then it becomes possible to make him admit the possibility of knowledge of many things similar to his knowledge of

¹⁷⁰ Ṣadr al-Dīn Shīrāzī, known as Mullā Ṣadrā (d.1640), was a Muslim philosopher whose major contribution was that he provided a synthesis of the nine centuries of the Muslim philosophical/theological heritage. He managed to merge the works of two important schools of Muslim philosophy, the Illuminationist (*ishrāqī*) School of Shihāb al-Dīn Suhrawardī (d.1191), and the Peripatetic (*mashāʾī*) School that was significantly advanced by Ibn Sīnā (d.1037). Moreover, Mullā Ṣadrā, in his magnum opus entitled *al-Asfār al-Arbaʿa fiʾl-Ḥikmat al-Mutaʿāliyya*, incorporated his philosophical synthesis and merged it with Ibn ʿArabī's (d.1240) Sufi metaphysics and the theology of al-Ashʿarī (d.936) and the Twelvers Shiites. Mullā Ṣadrā's work, also recognised as his transcendental theosophy, is argued to be the single most important and influential philosophical thought within the Muslim world in the last four hundred years. For more information on the works and the philosophy of Mullā Ṣadrā, see Nasr, Seyyed Hossein. "Mullā Ṣadrā: his teachings" in Nasr, Seyyed H and Leaman, Oliver (ed.) *History of Islamic Philosophy*, 2 vols. (Qum: Ansariyan Publications, 2001), pp. 643-662; Rizvi, Sajjad H. *Mullā Ṣadrā and Metaphysics: Modulation of Being* (London: Routledge, 2009)

being sceptic, such as his knowledge that he sees, hears, has sensations of touch, taste and smell, that when he feels hungry he looks for something that would satisfy his hunger, or quench his thirst when he feel thirsty. When he accepts these, he can be led to admit that he possesses the knowledge of other things as well, for all knowledge, as said earlier, terminates in sense experience (*al-ḥiss*).

However, should he refuse to admit that he knows that he is a sceptic and declare that he is sceptical of everything, even of his own scepticism, and knows nothing, there can be no debate with him and no argument will work upon him. This kind of person either suffers from a disease affecting his mental faculty, in which case he should see a physician, or he is one [who is] hostile to the truth, seeking to refute it¹⁷¹.

Thus, the major criticism given towards the sophists (or the sceptics) is that when they admit that knowledge of the external world cannot be obtained by the human mind, they are implicitly admitting that they “know” that it is impossible to obtain knowledge, which evidently tantamounts to a contradictory argument. On this basis, Muslim philosophers refute the claim that it is not possible to rely on sense perception, and maintain that it is

¹⁷¹ See Ṭabāṭabā‘ī, *Bidāyat al-ḥikma*, p. 184. For translations, see Ṭabāṭabā‘ī, Muḥammad Ḥusayn. *The Elements of Islamic Metaphysics: (Bidāyat Al-Ḥikma)*. Trans. ‘Alī Qūlī. Qarā’ī (London: ICAS, 2003)

possible to have knowledge – or *qaṭʿ* – of the external world or the objective reality.

3.2.4 The Impelling Property of *Qaṭʿ*

Apart from the essential properties of *kashfiyya* and *ṭarīqiyya*, Uṣūlī legal epistemology also describes *qaṭʿ* as possessing the necessary property of *muḥarrikiyya* (impulsion). In the realm of existence, the property of *muḥarrikiyya* is explained as the force that impels one who possesses *qaṭʿ* to act in accordance with their *qaṭʿ*. For instance, if it is supposed that a person is dying of thirst, and he possesses *qaṭʿ* that water is located in a particular direction, his *qaṭʿ* would necessarily impel him to move towards that particular direction¹⁷².

In accordance with the Uṣūlī definition, *qaṭʿ* is synonymous with knowledge, and as such the external object that is outside the mind does not have an impact on a person until he or she has knowledge of it, which consequently explains why *qaṭʿ* has the ability to impel the one who possesses it into action. Thus for instance, the objective existence of water itself will not have an impact upon the mind of the person who is dying with thirst; rather, only when it is apprehended and cognised by the mind will it cause the person to act in a

¹⁷² See Ṣadr, *Durūs 2* vol. 2, pp. 172-173

particular way. At this point, the person has obtained knowledge – or *qatʿ* - of the water in the objective world, and he or she is impelled into action.

It is suggested that a person is necessarily impelled towards acting in accordance with their *qatʿ* because he or she always believes that their disclosure of *qatʿ* is accurate, even though this may not be the case, as highlighted by Ḥaydarī. Nonetheless, in order to explain why a human being is always impelled to act in accordance with their certainty, the Uṣūlīs have offered two differing opinions¹⁷³. The first opinion proposes that it is rationally praiseworthy (*ḥusn*) to be impelled to act in accordance with certainty, and rationally blameworthy (*qubḥ*) to not be impelled to act in accordance with certainty. For example, if a person is dying with thirst, then it would be rationally praiseworthy for him to follow his certainty and be impelled towards the direction of water, as such an action would be beneficial for him. However, it would be rationally blameworthy for him to refrain from being impelled towards the direction of the water, as behaving against such an act would not be of benefit to him.

Meanwhile, the second opinion given by scholars such as Ḥaydarī proposes that it is a part of human nature to be impelled towards acting in accordance with certainty. In this instance, a person dying of thirst would naturally be impelled towards moving in the direction of water, as this is an instinctive

¹⁷³ See Ḥaydarī, *al-Qatʿ*, pp. 123-125

reaction for him based on the inherent nature of a human being to survive and secure his life. As Ḥaydarī points out:

The natural propensity within a human being will impel the human being for the attainment of everything that is compatible with his nature at any level of existence, whether it is at a rational level or at an imaginative level. This natural impelling force that we have has no connection with rational praiseworthiness or blameworthiness. It is for this reason that even if we were to deny the existence of rational praiseworthiness and rational blameworthiness, we find that such natural requirements manifests their effects¹⁷⁴.

Irrespective of whether acting in accordance with *qaṭʿ* is a dictate of rational praiseworthiness and rational blameworthiness, or a dictate of human nature, it is unanimously accepted by the Uṣūlīs that *qaṭʿ* has the property of *muḥarrikiyya*. However, it can be argued that in certain situations, *ẓann* (conjecture) may also have an impelling force upon a human being. For instance, if a person who is dying of thirst has *ẓann* that water exists in a particular direction, then his *ẓann* would also impel him to move towards that particular direction, which implies that **any** knowledge that a person has, whether it is *qaṭʿ* (certainty-bearing) or *ẓann* (conjectural), would impel a person to act in accordance with it, depending on the circumstances.

¹⁷⁴ *ibid*, p. 125

However, the Uṣūlī argument in response to this analysis would evidently be that whilst *qaṭʿ* is always accurate at the level of conception, *ẓann* is not, and based on this distinction, a person would **not** always necessarily be impelled towards acting in accordance with the indication of *ẓann*, due to being aware that there is a possibility that it may be inaccurate. Contrastingly, if a person has *qaṭʿ* then he or she necessarily believes that their *qaṭʿ* fully corresponds to the reality, and consequently would always be impelled to act in accordance with it.

3.3 The Epistemic Validity of *Qaṭʿ* in the Realm of Legislation

From the discussion so far, it has become clear that the properties of disclosure (*kashfiyya*) and reflection (*tariqiyya*) of the objective reality (*wāqiʿi*) are essential properties of *qaṭʿ*. In addition to these two defining properties, in the realm of existence *qaṭʿ* has also been described as possessing the property of *muḥarrikiyya*, which necessarily impels the person who possesses *qaṭʿ* to act in accordance with its indication.

These properties of *qaṭʿ* are taken as a basic presumption (*mabādī al-taṣdīqiyya*) in mainstream Shiite legal theory, as prominent Shiite *mujtahids* have generally displayed a tendency to mention these properties in passing, without discussing the aforementioned arguments in great detail. Instead, the

focal point of discussion within *uṣūl al-fiqh* relates to the *ḥujjiyya* (epistemic validity) of *qaṭʿ*.

It is found that when Anṣārī claims, “there is no problem with regards to the obligatory nature of following *qaṭʿ*...for indeed it by itself is a path (*ṭarīq*) towards the objective reality,” his Uṣūlī contemporaries have unanimously understood his conclusion to confirm that *qaṭʿ* is *ḥujja* (epistemologically valid) in the juristic derivation of Sharīʿa precepts. Based on this understanding, if a *mukallaḥ* is to follow and act in accordance with the indication of *qaṭʿ*, then he can be granted with excusability even if its indication does not – at the level of assent – correspond to the *wāqiʿ*. On the other hand, if a *mukallaḥ* does not follow or act in accordance with the indication of *qaṭʿ* and as a result acts contrary to the *wāqiʿ*, then he can be held accountable and be subjected to chastisement. However, on this note al-Sayyid Abū al-Qāsim al-Khūʿī (d.1412/1992) rightly points out that:

It is apparent from what we have discussed that the reflectiveness (*ṭarīqiyya*) of *qaṭʿ* is other than its *ḥujjiyya* (epistemic validity), for as shown it [i.e. the reflectiveness of *qaṭʿ*] is among its essentialities. This is contrary to its *ḥujjiyya*, as it is unfamiliar to the essence of *qaṭʿ* in

every which way it is envisaged, this is why there is conflation between them [i.e. the Uṣūlīs] with regards to what al-Anṣārī has said.¹⁷⁵

Therefore, it is clear that there exists some confusion within the Uṣūlī School with regards to what exactly is meant by Anṣārī, for he has, in a convoluted manner, claimed that it is obligatory to follow the indication of *qaṭʿ* based on the fact that it reflects the objective reality. However, it is evident that the essential properties of *qaṭʿ* (i.e. *kashfiyya* and *ṭarīqiyya*) do not in themselves suffice in proving the legislative property of *hujjiyya*. In other words, although it has been established that *qaṭʿ* has the property of disclosing and reflecting the objective reality, this does not necessarily imply that *qaṭʿ* is also epistemologically valid in the realm of legislation.

The Uṣūlīs have provided three different explanations in order to support Anṣārī's claim that *qaṭʿ* is *hujja* in the realm of legislation, and that it is obligatory (*wājib*) to follow its indication.

¹⁷⁵ This view of Khūʿī is provided by Abī Qāsim al-Kawkabī in his commentary on the discussions of Khūʿī, see Kawkabī, Abī Qāsim, *Mabānī al-istinbāṭ* (Najaf: al-Adāb, n.d.) vol. 1, p. 46

3.3.1 First Explanation: The Necessary Correlation of *Hujjiyya* to the Essence of *Qaṭʿ*

According to the popular Uṣūlī understanding, when Anṣārī claims that *hujjiyya* is a property of *qaṭʿ* in the realm of legislation, he means that it is *lawāzim al-dhat* of *qaṭʿ* i.e. *hujjiyya* is necessarily correlated to the essence of *qaṭʿ*¹⁷⁶. Thus, the property of epistemic validity i.e. accountability and excusability, necessarily exists whenever *qaṭʿ* exists, as this property is necessarily correlated to the essence of *qaṭʿ*. This mainstream view is clearly expounded by Khurāsānī, who states that:

Rationally, there is no doubt in the obligatory nature (*wujūb*) of acting in accordance with *qaṭʿ*, and the undoubted necessity of being impelled to act with it. It verifies the immediate duty (*taklīf*), inasmuch as it actualises the blameworthiness and chastisement for acting in contradiction with it, and [grants] excusability if you are mistaken [when acting in accordance with it]. This efficacy of *qaṭʿ* is necessary (*lāzim*).¹⁷⁷

Khurāsānī's view is supported by Khū'ī, who further elaborates by explaining that when Khurāsānī states that *hujjiyya* is necessarily correlated to the essence

¹⁷⁶ See Ḥaydarī, *al-Qaṭʿ*, pp. 129-130

¹⁷⁷ Khurāsānī, *Kifāyat al-uṣūl* vol. 2, p. 11

of *qaṭʿ*, he means that *qaṭʿ* has the property of *ḥujjiyya* in ‘actual fact’ (*naḥs al-amr*)¹⁷⁸.

In the Muslim discourse of philosophy, it is upheld that every essence subsists through existence, however it is not necessary that every existence must exist in the realm of the external world; rather, it is possible for an essence of a thing to be existent in the realm of the mind, thus making it possible for the mind to comprehend the existence of such an essence¹⁷⁹. For instance, the mind is able to comprehend the proposition of the ‘impossibility of the unity of contradiction’, although it does not physically exist in the realm of the external world, as clearly it is impossible for two contradictory things to ever unite in the external world. However, this does mean that this proposition does not exist in actual fact, for if it did not exist then it would **not** be possible for the mind to comprehend its existence. Accordingly, the essence of this proposition has actual fact existence (*wujūd fi-l naḥs al-amr*) in the realm of the mind and not in the realm of the external world.

In light of this, the mainstream Uṣūlī view maintains that *qaṭʿ* by its very definition, (or by its very essence) has the property of disclosure (*kashfiyya*) and reflectiveness (*ṭarīqiyya*) of the objective reality. Moreover, in the realm of

¹⁷⁸ See Kawkabī, *Mabānī al-istinbāt*, vol. 1, p. 45; Ḥaydarī, *al-Qaṭʿ*, p. 129; See Khūʾī, *Miṣbāḥ al-uṣūl*, vol. 2, pp. 15-17

¹⁷⁹ For a complete understanding of the Muslim philosophical/metaphysical understanding of the primacy of existence, see Ṭabāṭabāʾī, *Bidāyat al-ḥikma*, pp. 11-28; Nasr, “Mullā Ṣadrā: his teachings” pp. 646-648; Dabashi, Hamid. “Mīr Dāmād and the founding of the “School of Iṣfahān”” in Nasr, Seyyed H and Leaman, Oliver (ed.) *History of Islamic Philosophy*, 2 vols. (Qum: Ansariyan Publications, 2001), pp.612-615

the external world, it impels the person who possesses it into action. However, in actual fact, *qaṭʿ* also has the further property of *ḥujjiyya*, and this property exists in the mind. Thus, the property of *ḥujjiyya* is not something that is postulated, and accordingly it is **not** something that can either be affirmed or negated by the Divine Lawgiver, because *ḥujjiyya* necessarily exists whenever *qaṭʿ* exists.

Nonetheless, although the mainstream conclude that the property of *ḥujjiyya* is a necessary correlative of *qaṭʿ*, this in itself is not sufficient in proving **why** it is obligatory (*wājib*) or necessary to follow and act in accordance with *qaṭʿ*, whereby failing to do so would imply that a *mukallaḥ* can be chastised. In response to this criticism, the mainstream have argued that since *qaṭʿ* by its very nature is epistemologically valid (*ḥujja*), following and acting in accordance with it ensures that it is given the proper right that it deserves. Indeed, the mainstream ‘Adliyya understanding supports this view, as it proposes that giving any particular thing its proper right is an act of justice (*‘adl*), and justice is something that is praiseworthy (*ḥusn*). Meanwhile, not following or acting in accordance with *qaṭʿ* is considered to be an act of oppression, as this equates to not giving *qaṭʿ* the proper right that it deserves, and therefore it is blameworthy (*qabīḥ*) upon the *mukallaḥ*.

Khū’ī supports this mainstream Uṣūlī stance and states that:

What is apparent from what we have discussed is that the *ḥujjiyya* of *qaṭʿ* is amongst its necessary correlatives; indeed reason perceives the praiseworthiness (*ḥusn*) of acting in accordance with it, and the blameworthiness (*qubḥ*) of not acting in accordance with it. [Furthermore] it also comprehends the properness of the chastisement of the Master (*mawla*) to his slave (ʿ*abd*) who does not follow it, and comprehends the improperness of chastising an individual who acts in accordance with it, even if it [in actuality] is contrary to the *wāqiʿ*.¹⁸⁰

In essence, the mainstream Uṣūlī thought argues that *ḥujjiyya*, in actual fact (*nafs al-amr*), is amongst the essential properties of *qaṭʿ*, as it is necessarily correlated to the essence of *qaṭʿ*. This implies that *qaṭʿ* by its very nature is epistemologically valid, which results in the *mukallaf* being granted with excusability if he follows and acts in accordance with it, and being held accountable if he does not follow and act in accordance with it. Furthermore, the mainstream view maintains that the property of *ḥujjiyya* that is possessed by *qaṭʿ* cannot be affirmed nor negated by the Divine Lawgiver. Finally, by applying the ʿAdliyya theological understanding of the “praiseworthiness of justice and the blameworthiness of oppression” (*ḥusn al-ʿadl waʿl-qubḥ al-ẓulm*) as a major premise, the mainstream prove the obligatory nature (*wujūb*) of following and acting in accordance with *qaṭʿ*, and justify that by not doing

¹⁸⁰Khūʿī, *Miṣbāḥ al-uṣūl*, vol. 2, p. 16

so, a *mukallaf* can be held accountable for committing a blameworthy act, for which he may be chastised.

3.3.2 Second Explanation: *Hujjiyya* of *Qaṭʿ* by the Convention of Rational People

The less popular understanding amongst the Uṣūlīs is that when Anṣārī claims that *hujjiyya* is a property of *qaṭʿ* in the realm of legislation and that it is obligatory to follow its indication, he means that this property is postulated based on the convention of rational people (*banāʾ al-ʿuqalāʾ*). This implies that rational people choose to postulate the property of *hujjiyya* (epistemic validity) to *qaṭʿ*, because deeming *qaṭʿ* to be epistemologically valid (*hujja*) ensures that the functioning of the social system is regulated and preserved (*hiḏ al-niẓām*). Accordingly, if one was to act contrary to that which is fully disclosed or known to him with *qaṭʿ*, then this would necessarily disrupt the social construct of human life, and as a result the rational convention deems that such a person should be held accountable¹⁸¹. On the other hand, if one was to act in accordance with that which is fully disclosed and known to him with *qaṭʿ*, then this safeguards the social construct of human life, and as a result the rational convention deems that such a person should be granted with excusability even

¹⁸¹ See Ḥaydarī, *al-Qaṭʿ*, pp. 129-132; and Muẓaffar, *Uṣūl al-fiqh* vol. 2 p. 21

if his *qaṭʿ* indicates towards something which in actuality is contrary to the objective reality.

Therefore, *qaṭʿ* in actual fact (*nafs al-amr*) only has the essential properties of *kashfiyya* and *ṭarīqiyya*, and in the realm of existence it also has the property of impelling one who possesses it into action. However, the property of *ḥujjiyya* is not something which it has in actual fact, rather it is something that is merely postulated by the convention of rational people. Thus, *ḥujjiyya* can either be affirmed or negated by the rational convention, and since the Divine Lawgiver is theologically accepted as the Chief of all rational agents (*raʾis al-ʿuqalāʾ*) and He has not refuted this convention of rational agents, then He too necessarily agrees with this convention and acts accordingly¹⁸².

Adherents of this view prove the obligatory nature of following *qaṭʿ* by arguing that safeguarding the social system gives it the proper right it deserves, and as such is an act of justice (*ʿadl*). On the other hand, not safeguarding the social system equates to taking away the proper right it deserves, and thus is an act of oppression (*ẓulm*). Consequently, using the ʿAdliyya theological understanding of “the praiseworthiness of justice and the blameworthiness of oppression” (*ḥusn al-ʿadl waʾl-qubḥ al-ẓulm*) as a major premise, it is claimed that it is praiseworthy (*ḥusn*) to follow and act in accordance with *qaṭʿ* and

¹⁸² The mainstream belief regarding the Divine Lawgiver being the Head of all rational beings (Sayyid al-ʿuqalāʾ) is discussed at length in Chapter Two; in the context of the jurisprudential discourse it is also discussed by Ḥaydarī in *al-Qaṭʿ*, pp. 146-151

blameworthy (*qubḥ*) not to do so. This view is clearly expounded by Iṣfahānī who states that:

It should be known that the actualization of chastisement is not from the existential effects or the necessary correlation of acting in contradiction with something that is certainly known. Rather, it is among the postulates of the rational people (*‘uqalā*). In a little while it will become clear, by the will of God, that the rational judgment (*ḥukm al-‘aql*) that actualises chastisement is not something that is dictated by proof (*burhān*) or axiomatic propositions (*al-qaḍāyā al-ḍarūriyya*), rather it amongst the propositions that are popularly acknowledged (*al-qaḍāyā al-mashhūra*) and followed by the convention of rational people in every issue. The conflicting of the command of the Master (*mawla*) is doing oppression to Him, and oppression is blameworthy (*qabīḥ*), and [this is something that the] rational people agree necessitates blame and chastisement.

Therefore, to say that *qaṭ‘* actualises chastisement due to acting in contradiction [with it], and to exemplify that it is type of oppression, is based on the condition of rational people. [Inasmuch as] the rational people postulate this [property of *qaṭ‘*] and this is not [something which is] an essential/inevitable effect [of *qaṭ‘*]¹⁸³.

¹⁸³ See Iṣfahānī, *Nihāyat al-Dirāya fī Sharḥ al-Kifāya* vol. 3, p. 22

It is important to note that one classification of propositions proposed in the discourse of Muslim logic is between axiomatic propositions (*al-qadāyā al-darūriyya* or *yaqīniyyat*) and popular propositions (*mashhūrāt*). Axiomatic propositions are propositions that exist in actual fact (*naḥs al-amr*) and necessarily correspond to the objective reality. For instance, an example of an axiomatic proposition is “a whole is greater than a part”. Meanwhile, popular propositions are those propositions that do not exist in actual fact, but are nonetheless widely accepted by rational people¹⁸⁴. The proposition of the “praiseworthiness of justice and the blameworthiness of oppression” is held as an axiomatic proposition by the mainstream, on the basis that it has actual fact existence that corresponds to the objective reality. On the other hand, scholars such as Iṣfahānī, and - his student - Muḥaffar¹⁸⁵ view this as a popular proposition, which does not have actual fact existence; rather, it is merely a proposition that is widely accepted by the convention of rational people.

For instance, “justice” is rationally deemed as “praiseworthy” by the mainstream because it has in actual fact the intrinsic moral value of praiseworthiness, and its intrinsic moral value corresponds to the objective

¹⁸⁴ See Muḥaffar, “*Ṣanāʾāt al-Khamsa*” in *al-Manṭiq*, pp. 282-299

¹⁸⁵ It is vital to note that Muḥaffar elaborates on his view in his second chapter that is on “*al-ḥusn waʾl qubḥ al-ʿaqlī*” see Muḥaffar, *Uṣūl al-fiqh* vol.1, pp. 184-209 Moreover, in line with Iṣfahānī’s understanding Muḥaffar categorically states that the obligatory nature (*wujūb*) of following and acting in accordance with *qaṭʿ* is something that is unanimously concurred by the rational people, inasmuch as they have a fixed opinion (*ārāʾ al-maḥmūda*) on it (see *Uṣūl al-fiqh* vol. 2, p. 21); Muḥaffar’s deliberations and contributions to the discourse of *al-ḥusn waʾl qubḥ al-ʿaqlī* are discussed at length in the unpublished Ph.D. of Ali-Reza Bhojani, see Bhojani, *Moral Rationalism and Independent Rationality as a Source of Sharīʿa in Shīʿī Uṣūl al-Fiqh: In Search for an ʿAdliyya Reading of Sharīʿa*.

reality. On the other hand, scholars such as Iṣfahānī and Muẓaffar advocate that an action is only judged to be praiseworthy or blameworthy because the convention of rational people postulates the value of praiseworthiness or blameworthiness to an action, and since the Divine Lawgiver is the Chief of all rational beings, He too endorses the postulation of the rational people. Thus, in line with this opinion, “justice” is only rationally deemed as “praiseworthy” because rational people have postulated the moral value of praiseworthiness to it, and since the Divine Lawgiver is the Chief of all rational beings, He too agrees with such postulation, and as a result, “justice” becomes praiseworthy in the objective reality.

In essence, it is clear that both the aforementioned explanations provide a different understanding of what Anṣārī meant by the *ḥujjiyya* of *qaṭʿ*. The first explanation claims that the property of *ḥujjiyya* is amongst the essentialities of *qaṭʿ*, and as a result can never be affirmed nor negated. However, the second explanation argues that the property of *ḥujjiyya* is postulated by the convention of rational people, and therefore it can either be affirmed or negated depending on the convention. Although these explanations provide a different insight into the relationship between action and their moral properties, they collectively maintain that it is obligatory to follow and act in accordance with *qaṭʿ* because of the major premise of the ‘Adliyya theology of “the praiseworthiness of justice and the blameworthiness of oppression.”

3.3.3 Third Explanation: *Hujjiyya* of *Qaṭ'* by the judgment of reason (*hukm al aql*)

The third explanation is the most recently proposed justification amongst the contemporary Uṣūlī explanations behind Anṣārī's claim. Its chief exponents are al-Ṣadr and his contemporaries, who in the present day are recognised as adherents of the School of *ḥaqq al-ṭā'a* (also known as *al-maslak al-ḥaqq al-ṭā'a*)¹⁸⁶. In accordance with this explanation, reason (*'aql*) is independently able to judge that *qaṭ'* has the property of *hujjiyya* and that it is obligatory to follow and act in accordance with it. Accordingly, reason can independently judge that if a person follows and acts in accordance with *qaṭ'*, then he or she can be granted with excusability. However, if a person fails to follow and act in accordance with *qaṭ'*, then he or she can be held accountable and subject to chastisement.

It can be suggested that this explanation is primarily built upon the criticisms raised towards the two aforementioned explanations. The following syllogism clearly illustrates the argument these two explanations collectively offer:

Major premise: the act of justice is praiseworthy and the act of
 oppression is blameworthy

¹⁸⁶See Ṣanqūr, *al-Mu'jam al-uṣūl* vol. 2, pp. 38-39

Minor premise: following *qaṭʿ* is an act of justice and not following *qaṭʿ* is an act of oppression

Conclusion: following *qaṭʿ* is praiseworthy and not following *qaṭʿ* is blameworthy

This syllogism illustrates that the minor premise is established through the major premise, and this as a result leads to the conclusion that it is obligatory (*wājib*) to follow and act in accordance with *qaṭʿ*. However, as proclaimed by Ḥaydarī:

Indeed the mainstream [opinion] among the Uṣūlīs is that there is a relationship between the epistemic validity (*ḥujjiyya*) of *qaṭʿ* on one hand, and on the other hand, the principle of the praiseworthiness of justice and the blameworthiness of oppression. The correct [opinion] in this is that there is no relationship between them¹⁸⁷.

Thus, Ḥaydarī argues that prior to proving the obligatory nature of following and acting in accordance with *qaṭʿ* through use of the major premise, one has to establish that *qaṭʿ* deserves the right to be followed and acted in accordance with in the first place. For instance, it may be proposed that one should “respect every scholar,” however before a person respects a scholar, he or she

¹⁸⁷ Ḥaydarī, *al-Qaṭʿ*, p. 133

must establish that the person is a “scholar”. As a result, Ḥaydarī, similarly to his teacher Ṣadr, proposes that the right of following *qaṭʿ* has been established because God – or the Divine Lawgiver – has the absolute right of obedience (*ḥaqq al-ṭāʿa*), and thus whenever He discloses a duty (*taḳlīf*), it must be followed and acted in accordance with¹⁸⁸.

In essence, Ḥaydarī argues that there is no need for the major premise to establish that following and acting in accordance with *qaṭʿ* is praiseworthy or blameworthy, as by accepting that the Divine Lawgiver has the absolute right of obedience, one by priority or necessity accepts that *qaṭʿ* – which is the full disclosure of the duty He ordains - is epistemologically valid (*ḥujja*). This in itself however does not confirm whether in the realm of legislation, the property of *ḥujjiyya* is amongst the essentialities of *qaṭʿ*, or whether it is postulated. Indeed, if the former is true then it is not possible for the Divine Lawgiver to either affirm or negate the property of *ḥujjiyya* to the essence of *qaṭʿ*, whilst if the latter is true then it is possible for the Divine Lawgiver to do so.

In response to this, it is important to understand how Shiite Uṣūlīs have theologically and philosophically accepted that God possesses the absolute right of obedience. In order to substantiate this belief, Uṣūlīs have offered two key arguments, namely the argument of *wujūb shukr al-munʿim* (the obligatory

¹⁸⁸ Ṣadr, *Durūs* 2 vol. 2, pp. 35-44; Ḥaydarī, *al-Qaṭʿ*, pp. 171-186

nature of thanking the one who bestows) and the argument of God's *al-khāliqiyya wa'l-mālikiyya* (Creatorship and Proprietorship).

The theologians commonly accept the former argument, which proposes that it is rationally obligatory (*wujūb*) upon every human being to thank (*shukr*) or show gratitude towards the one who bestows (*al-mun'im*), and since God – or the Divine Lawgiver – is recognised as the One who bestows life upon the human being, intuition acknowledges that it is rationally obligatory for a human being to show gratitude towards God. This gratitude is expressed by being completely obedient to God and by fulfilling every duty (*taklīf*) that He discloses¹⁸⁹.

Meanwhile, the philosophers commonly accept the latter argument of *al-khāliqiyya wa'l-mālikiyya*, which proposes that since God is the Creator (*khāliq*) of everything, He is also the Proprietor (*mālik*) of everything, and the Proprietorship that is possessed by God is different to that which is possessed by the human proprietor, in that He has absolute control and dominance over His proprietorship. Ṭabāṭabā'ī in his exegesis of the Qur'ān states that:

Indeed, God, to whom belongs glory, is the Proprietor whose proprietorship is unrestricted. As for Him being the Proprietor of everything unrestrictedly, this is because He has unrestricted lordship

¹⁸⁹ See *ibid*, pp. 140-142; Shārwadī, *Buḥuth fī 'ilm al-uṣūl* vol. 4, p. 28

(*rubūbiyya*) and unrestricted establishing force (*qaymūma*) upon everything, for indeed He is the Creator of everything and to Him everything is towards¹⁹⁰.

The concept of God's *rubūbiyya* and *qaymūma* indicates that He continuously nurtures and sustains existence, and as soon as He stops doing so, existence ceases to exist. This can be analogised to the concept of human thinking, for example when a human thinks of a thought, they are the creator of that thought, and since they are the creator of that thought, they have the ability to modify or even stop the thought at any point, as effectively they are the proprietor of the thought.

The key distinction between the two proposed arguments is that in accordance with the first argument of *wujūb shukr al-mun'im*, the right of obedience that is possessed by the Divine Lawgiver is not essential, as it is postulated by reason, whereby reason judges that it is obligatory to thank the one who bestows. Meanwhile, the second argument of *al-khāliqiyya wa'l-mālikiyya* proposes that the right of obedience that is possessed by the Divine Lawgiver is essential, as reason naturally recognises that since the Divine Lawgiver is the Creator and the Proprietor of everything, He essentially possesses the right of obedience.

¹⁹⁰ Ṭabāṭabā'ī, *al-Mīzān fī tafsīr al-Qur'ān* vol. 3, p. 129

Ḥaydarī, similarly to Ṣadr, chooses to advocate the second argument to the first, and as such claims that the right of obedience that is possessed by the Divine Lawgiver is established through Him being the Creator and the Proprietor. In support of his claim, Ḥaydarī points out that if the first argument were applied, it would evidently be blameworthy **not** to thank or to show gratitude to the one who bestows. However, this argument does not necessarily imply that such a person would be subjected to chastisement, because although reason judges that it is blameworthy not to thank the person – or God - who bestows, it does not necessarily judge that they become worthy of chastisement, as there is no correlation between not showing gratitude and being chastised. Moreover, Ḥaydarī also argues that the second argument of *al-khāliqiyya wa’l-mālikiyya* is inclusive of the first argument of *wujūb al-shukr al-mun‘im*, whereby it is, by priority, incumbent to show gratitude to the Creator and the Proprietor, as He continually bestows by nourishing and sustaining life. Therefore, by proclaiming the argument of God being the Creator and the Proprietor, it necessarily includes that He is owed gratitude¹⁹¹.

It thus becomes clear that for the adherents of the School of *ḥaqq al-tā‘a*, the right of obedience that is possessed by the Divine Lawgiver is essential in nature. As a result, this necessarily implies that in the realm of legislation, *ḥujjiyya* is an essential property of *qaṭ‘*, in that it cannot be postulated by the convention of rational people. As soon as *qaṭ‘* is available, or as soon as God –

¹⁹¹ Ḥaydarī, *al-Qaṭ‘*, p. 136

or the Divine Lawgiver - fully discloses a duty upon a *mukallaf*, such disclosure deserves full obedience, and therefore it is epistemologically valid (*hujja*), inasmuch as it brings about the effects of accountability and excusability.

In accordance with this view, although the disclosure of a duty from the Divine Lawgiver is essentially epistemologically valid for the *mukallaf*, this does not mean that it is necessarily correlated to the essence of *qaṭʿ*. Rather, the Divine Lawgiver, due to his absolute *khāliqiyya* and *mālikiyya*, is able to issue an amnesty (*tarkhīṣ*), whereby it is logically possible for Him to command or instruct the *mukallaf* to **not** follow *qaṭʿ*. As discussed in the previous chapter, the default position maintained by Ṣadr is that every disclosed duty of the Divine Lawgiver, whether it is *qaṭʿ* or even *ẓannī* is epistemologically valid, unless the Divine Lawgiver issues an amnesty that undermines the epistemic validity of that particular disclosure. Nonetheless, Ṣadr concludes that although in the realm of possibility (*maqām al-thubūt*), it is logically possible for the Divine Lawgiver to issue an amnesty for both *qaṭʿ* and *ẓannī* disclosure, in the realm of practice (*maqām al-ithbāt*) it is impossible for Him to issue an amnesty that permits a *mukallaf* to act contrary to that which has been fully disclosed to him with *qaṭʿ*¹⁹². Instead, it is only possible for an amnesty to take effect against the epistemic validity of a disclosure when a *mukallaf* possesses *ẓann*, or conjectural disclosure.

¹⁹² See Ṣadr, *Durūs* 3 vol. 2, p. 35

3.4 Conclusion

This findings from this chapter illuminate that the Uṣūlīs have unanimously defined *qaṭʿ* to be synonymous with the terms *ʿilm* and *yaqīn*, and accept that the nature of *qaṭʿ* consists of the essential properties of *kashfiyya* and *ṭarīqiyya*, whereby it naturally, or essentially, discloses and reflects that which is in the objective reality (*wāqiʿi*). Furthermore, in line with the Muslim discourse of philosophy and logic, the Uṣūlīs maintain that *qaṭʿ* is always accurate in its disclosure and reflection of the objective reality at the level of conception (*taṣawwur*), and admit that it can only potentially fail to do so at the level of assent (*taṣdīq*). It is also apparent from the analysis on the nature of *qaṭʿ* that both the Uṣūlī camp and mainstream Muslim philosophers and logicians collectively maintain the epistemological presumption of the infallibility of sense perception, and consequently advocate that the mind is able to accurately conceive the objective reality, insofar as it is able to have *qaṭʿ* or *ʿilm* of the objective reality which in actuality corresponds to it. Moreover, another key presumption within Uṣūlī legal theory is the acceptance of the concept that in the realm of existence (*ʿālam al- takwīnī*), *qaṭʿ* also has the property of *muḥarrikiyya*, inasmuch as it naturally impels the one who possesses it into action.

In light of these existential epistemological presumptions, post-Anṣārī Uṣūlīs have unanimously concurred with Anṣārī's thought, by maintaining that in the realm of legislation (*ʿālam al-tashrīʿi*), *qaṭʿ* possesses the property of *ḥujjiyya*

(epistemic validity), and thus it is obligatory (*wājib*) to follow and act in accordance its indication. Therefore, they uphold that by following and acting in accordance with *qaṭʿ*, a *mukallaḥ* can be granted with excusability; however, failing to do so can lead to the *mukallaḥ* being held accountable and thus subject to chastisement. The Uṣūlīs have given three different explanations to justify their standpoint. Firstly, in accordance with the mainstream explanation, *qaṭʿ* is epistemologically valid (*ḥujja*) because the property of epistemic validity is necessarily correlated to the essence of *qaṭʿ*, thereby concluding that it is essentially praiseworthy to follow and act in accordance with it. Secondly, scholars such as Iṣfahānī and Muẓaffar explain that the property of *ḥujjiyya* is postulated by the convention of rational people (*banāʾ al-ʿuqalāʾ*). Thus, they too propose that it is obligatory to follow and act in accordance with *qaṭʿ*, although they base this conclusion on the standpoint that since the Divine Lawgiver is the Chief of all rational people (*raʾīs al-ʿuqalāʾ*) He too endorses the postulation of the rational people. Thirdly, proponents of the School of *ḥaqq al-tāʾa* advocate that the property of *ḥujjiyya* is postulated by the Divine Lawgiver due to Him being the Creator (*khāliq*) and the Proprietor (*mālik*) of all existence. As a result, they conclude that the Divine Lawgiver deserves the right of obedience, and likewise maintain that it is obligatory to follow and act in accordance with *qaṭʿ*.

It is noted that the latter two explanations signify that in the realm of legislation, the nature of *qaṭʿ* is parallel to the nature of *ẓann*, as like *ẓann*, the epistemic validity of *qaṭʿ* can either be affirmed or negated by postulation.

Therefore, these explanations, and particularly the explanation provided by scholars such as Iṣfahānī and Muẓaffar, hold significant implications upon the range of evidence used in the juristic process of deriving Sharīʿa precepts. Based on the proposed understanding, the utilisation of *qaṭʿī* evidence in the derivation of Sharīʿa precepts is contingent upon the postulation of their epistemic validity, and indeed if the epistemic validity of *qaṭʿī* evidence were negated, then this would effectively result in restricting the range of evidence that can be used. This raises the question that if the epistemic validity of *qaṭʿī* evidence is negated, then is it ever possible to attain knowledge of Sharīʿa precepts? If it were concluded that it is not possible, then this would be reminiscent of the sceptical stance, which itself is highly criticised. However, if it is concluded that it **is** possible, then there still exists the predicament of distinguishing between which evidence can be used in the derivation of Sharīʿa precepts, as evidently if the epistemic validity of *qaṭʿī* evidence is denied, then by priority the epistemic validity of any evidence that is less than *qaṭʿī* must also be denied.

Nevertheless, although post-Anṣārī Uṣūlīs have offered various explanations in order to justify the relationship between *ḥujjiyya* and *qaṭʿī*, they all unanimously agree on the epistemological underpinning that *qaṭʿī* is epistemologically valid, and that it is obligatory to follow and act in accordance with its indication. As a result, it is maintained that only *qaṭʿī* evidence can be used in the derivation of Sharīʿa precepts, and in light of this epistemological underpinning, the contemporary Uṣūlī discourse proposes that

qaṭʿ evidence has the ability to substantiate particular evidence that emanate *ẓann*. Accordingly, the next chapter will investigate how contemporary Uṣūlīs have argued for the epistemic validity of evidence that emanates especial conjecture (*ẓann al-khāṣ*).

CHAPTER FOUR

The Epistemic Validity of *Zann al-Khāṣ*: a critical analysis of *al-khabar al-wāḥid*

In light of the primary axiom maintained in Shiite legal epistemology of the non-validity of *ẓann* qua *ẓann*, it becomes clear that in accordance with the contemporary Uṣūlī understanding, it is prohibited for a *mujtahid* to utilise any evidence that gives rise to mere conjecture in the juristic process of deriving Sharīʿa precepts. This is because *ẓann* is unable to reveal accurate knowledge of the objective reality (*wāqīʿ*), and thus by following *ẓannī* (conjectural) evidence, there exists the likelihood of a *mujtahid* – or a *mukallaf* – to potentially err by overlooking the objective reality, for which he can be held accountable and subjected to chastisement.

Instead, the Uṣūlīs unanimously agree that accurate knowledge of the objective reality can only be obtained from evidence that gives rise to *qaṭʿ* (certainty), and it is maintained that a *mujtahid* can only utilise *qaṭʿī* (certainty-bearing) evidence in the juristic process of deriving Sharīʿa precepts. Consequently, if by using *qaṭʿ* and acting in accordance with its indication, a *mujtahid* in actuality overlooks that which is in the objective reality, then he can be granted with excusability and not be subjected to chastisement, as he is only following what he believes to correspond to the objective reality.

Undoubtedly, by confining the derivation of Sharīʿa precepts to only evidence that gives rise to *qaṭʿ*, the access that a *mujtahid* has to knowledge of the

Sharī'a precepts is limited, and as a result although there is a wide range of evidence that can potentially reveal knowledge of Sharī'a precepts, the *mujtahid* is unable to act in accordance with their indication, as they are not deemed as being able to disclose the objective reality accurately. However, in line with the contemporary Uṣūlī understanding, it is possible for the Divine Lawgiver to overrule the primary axiom of the non-validity of *ẓann* by granting the permission to use evidence that emanates *al-ẓann al-khāṣ* (especial conjecture) in the juristic derivation of Sharī'a precepts. Knowledge of such permission can only be obtained through *qaṭ'ī* evidence, and thus the Uṣūlī discourse of legal theory is largely preoccupied in examining *qaṭ'* that has the ability to substantiate or corroborate any conjectural evidence that has the potential of revealing Sharī'a precepts.

This chapter will critically analyse how Muḏaffar substantiates and justifies the epistemic validity and the juristic utility of one of the most contentious textual evidence that reveals the *sunna* of the *ma'ṣūm*, namely *al-khabar al-wāḥid* (the isolated report). It will firstly examine how Muḏaffar advocates the mainstream Uṣūlī understanding of the epistemic validity of *ẓann al-khāṣ*. This chapter will then move on to discuss the *sunna* of the *ma'ṣūm*, and particularly consider how Muḏaffar in his legal theory substantiates the epistemic validity of the *sunna* that is reported through conjectural isolated reports, by referring to other textual and non-textual evidence that he deems as *qaṭ'ī*.

This critical analysis will not only clarify how the Uṣūlīs substantiate *ẓannī* evidence with *qaṭʿ*, but it will also determine the extent or the nature of *qaṭʿ* that the Uṣūlī School has access to. Undoubtedly, if it were to be found that they have broad access to such evidence, then this would necessarily imply that it is possible to substantiate a wide range of conjectural evidence, particularly the sources and hermeneutical methods that have been proposed by contemporary Muslim thinkers¹⁹³. Alternatively, if it is found that the extent or the nature of access to *qaṭʿ* is limited, then this would unescapably infer that the juristic derivation of Sharīʿa precepts is restricted to only specific evidence that emanates *ẓann al-khāṣ*, and it is not possible to substantiate the epistemic validity of a wider range of evidence under the pretext of Uṣūlī legal theory.

4.1 *Ẓann al-khāṣ* in Uṣūlī legal theory

A unique feature of Uṣūlī legal theory that separates it from Sunni legal theory and Akhbārī legal theory is its acceptance of *ẓann al-khāṣ* in the juristic derivation of Sharīʿa precepts. On one end of the Muslim jurisprudential spectrum, the Sunni School’s discourse of legal theory is commonly described – at least in Shiite literature – to accept the indication of *ẓann*, or more specifically *ghalabat al-ẓann* (preponderant conjecture) in the juristic

¹⁹³ See Introduction

derivation of Sharī‘a precepts¹⁹⁴. On the other end of the spectrum, the Shiite Akhbārī School is historically recognised as playing a critical role in the denial of *ẓann* in the juristic derivation of Sharī‘a precepts. In comparison to the mainstream Sunni School’s and the Shiite Akhbārīs, the Uṣūlī School distinctively places itself in the middle of this spectrum. Thus, whilst it accepts the primary axiom of the non-validity of *ẓann* maintained in Shiite legal theory, it also acknowledges the limits of only accepting *qaṭ‘ī* evidence, and accordingly appreciates the need to widen the range of evidence that can be utilised in the juristic derivation of Sharī‘a precepts. By tactfully grounding itself between the two juxtaposing extremes portrayed by the Sunnis and the Akhbārīs, the Uṣūlī School expounds that the indication of any evidence that gives rise to *ẓann* can be accepted in the juristic derivation Sharī‘a precepts, provided that it has been substantiated by a *qaṭ‘ī* evidence, which establishes that the Divine Lawgiver has made an exception to the primary axiom of Shiite legal theory¹⁹⁵. This Uṣūlī understanding is clearly upheld by Muẓaffar, who after establishing the non-validity of *ẓann* qua *ẓann*, states:

¹⁹⁴ It is vital to note that in Sunni legal theory, *ghalabat al-ẓann* refers to an opinion of a *mujtahid* that is recognised as being epistemologically valid because the preponderant conjecture of a *mujtahid* reaches a very high level of probability, inasmuch as there is a very high possibility that it in actuality corresponds to the *wāqī‘ī*, and for this reason Sunni legal theory deems its epistemic validity to be just less than the epistemic validity of certainty. See Hallaq, *A History of Islamic Legal Theories*, p. 39. It also must be noted that the concept of *ghalabat al-ẓann* is translated and explained in various different ways, for instance, “dominant opinion [of a jurist]” see Calder, *Doubt and Prerogative*, p. 59; “substantiated speculation” see Rebstock, U. “A Qāḍīs Errors” *Islamic Law and Society* 6.1, (1999), p. 14; “epistemic excellence” see Emon, Anver M. “To Most Likely Know the Law: Objective, Authority and Interpretation in Islamic law” *Hebraic Political Studies* 4.4, (2009), p. 434; “preponderance of belief” see El-Fadl “The Human Rights Commitment in Modern Islam”, p. 138

¹⁹⁵ The epistemic validity of *ẓann al-khāṣ* is maintained by all post-Anṣārī Uṣūlīs, for instance see Anṣārī, *Farāī‘ d al-uṣūl* vol. 1, p. 54; Khurāsānī, *Kifāyat al-uṣūl* vol. 2, pp. 38-44; Ḥaydarī, *al-Ẓann*, pp. 197-203; Faḍlī, *Durūs fī uṣūl fiqh al-Imāmiyya* vol. 1, pp. 270-274; Ṣadr, *Durūs fī ‘ilm al-uṣūl* vol. 2, pp. 47-52

If it [i.e. *ẓann*] is established by *qaṭʿī* evidence, and it is [deemed as] epistemologically valid (*ḥujja*) by *yaqīn* that the Divine Lawgiver has postulated it as *al-ẓann al-khāṣ* as a particular *ṭarīq* for His precepts (*aḥkāṃ*), and He has considered it to be an authority upon it, and He is content with it being an *imāra* that refers to it, and He has permitted us to utilise it even though it is *ẓann*, for indeed such *ẓann* is excluded from the primary axiom... Then in reality taking [recourse] to *ẓann al-muʿtabar* (corroborated conjecture) that is established by *qaṭʿī* as [being] epistemologically valid is not like taking [recourse] to *ẓann* qua *ẓann*¹⁹⁶.

Thus, Muẓaffar upholds that the verses of the Qurʾān that he believes apparently indicate on the prohibition of following and acting in accordance with *ẓann*¹⁹⁷ are modified, or even abrogated, by *qaṭʿī* evidence that substantiates the epistemic validity of *ẓann al-khāṣ*. It can be deduced from his statement that Muẓaffar admits that it is possible to substantiate the epistemic validity of *ẓann al-khāṣ* by *yaqīn*, and thus he endorses that it is possible to have access to absolute knowledge of such substantiation, which in actuality corresponds to the objective reality.

In the Uṣūlī discourse, a *ẓannī* evidence that is substantiated is at the same epistemic pedestal as a *qaṭʿī* evidence, in that, in practice, it too has the ability

¹⁹⁶ Muẓaffar, *Uṣūl al-fiqh* vol. 2, p. 16

¹⁹⁷ See Chapter Two for the verses used by the Shiites to establish the primary axiom of the non-validity of *ẓann*.

to reveal Sharī'a precepts. However, the only difference between a *qaṭ'ī* evidence and a substantiated *ẓannī* evidence is that the former is accepted as being essentially epistemologically valid, and thus by its very essence must be used in the juristic derivation of Sharī'a precepts, whereas the latter is accidental in nature, insofar as it has been postulated by the Divine Lawgiver, and thus is used in light of His permission. Nevertheless, despite placing *ẓann al-khāṣ* (or specific substantiated *ẓannī* evidence) at the same epistemic pedestal as *qaṭ'ī* evidence, the Uṣūlī School maintains that its discourse of legal theory is in fact in line with the Shiite legal heritage of the non-acceptance of *ẓann* in the juristic derivation of Sharī'a precepts. For example, Muḏaffar points out:

At this point, the answer to the slander from a group of Akhbārīs towards the Uṣūlīs is apparent, regarding [the point] that they [i.e. the Uṣūlīs] utilise some evidence that are specifically conjectural, such as *khābar al-wāḥid* and its like. They have slandered them for taking *ẓann* that does not reveal the truth of a thing.

They [i.e. the Akhbārīs] have accused the Uṣūlīs of utilising particular conjectures (*ẓūnūn*). However, [in defence of the Uṣūlīs] they do not utilise them with the reason for them being merely conjectural, rather they utilise them for the reason that it is known that they are considered [by the Divine Lawgiver] as epistemologically valid (*ḥujja*) by the way

of certainty (*qaṭʿ*). Therefore, in reality they utilise it like they utilise *qaṭʿ* and *yaqīn*¹⁹⁸.

Thus, Muḏaffar clearly attempts to clarify that the Akhbārīs were misled in indiscriminately claiming that the Uṣūlīs emphatically adopted and accepted Sunni innovated legal theory, which accepted the epistemic validity of *ẓann*, or more specifically, recognised that knowledge of Sharīʿa precepts can be derived from evidence that creates *ghalabat al-ẓann* (preponderant conjecture). Instead, Muḏaffar categorically ascertains that Uṣūlī legal theory differs to Sunni legal theory, by not accepting the epistemic validity of any type of *ẓann*, even if it reaches the level of preponderant conjecture. Rather, he, together with other prominent post-Anṣārī Shiite Uṣūlīs, emphasises that Uṣūlī legal theory only accepts *ẓann* whose epistemic validity is established by the Divine Lawgiver Himself. Thus, in essence, the Uṣūlī acceptance of *ẓann* in the juristic derivation of Sharīʿa precepts radically differs to the Sunni acceptance of *ẓann*, as whilst the Shiites only accept the validity of *ẓann al-khāṣ*, which is deemed as being *ẓann* that the Divine Lawgiver Himself considers as epistemologically valid, the Sunnis accept the epistemic validity of every *ẓann* that has the ability to create preponderant conjecture, irrespective of whether it has been substantiated by the Divine Lawgiver or not.

¹⁹⁸ Muḏaffar, *Uṣūl al-fiqh* vol. 2, pp. 16-17

Due to the mainstream Sunni Schools and the Shiite Akhbārī and Uṣūlī Schools positioning themselves at different extremes of the Muslim jurisprudential spectrum, it is found that their understanding of evidence that is deemed as epistemologically valid in the juristic process of deriving Sharīʿa precepts correlates to their respective understanding of legal epistemology. For example, the mainstream Sunni Schools consent to the juristic utility of a wider range of evidence, and thus alongside the famous four-fold categorisation of evidence – i.e. the Qurʾān, *sunna*, *ijmāʿ* and *qiyās* (analogy) – certain schools also accept the epistemic validity of renowned *ẓannī* evidence such as *istiḥsān* and *maṣlaḥa*. Although they admit that these evidence give rise to *ẓann*, in accordance with their legal epistemology such *ẓann* is deemed to be epistemologically valid¹⁹⁹. Meanwhile, the Shiite Akhbārī School restricts the juristic utility of evidence to only those that it believes give rise to *qaṭʿī* knowledge of Sharīʿa precepts. Accordingly, the Akhbārīs deny the epistemic validity of the four-fold categorisation of evidence, and rather only consent to the epistemic validity of the textual evidence of the Qurʾān and *sunna*, and indeed at times, only *sunna*.

As discussed in Chapter One, in contrast to the popular Uṣūlī standpoint, scholars such as Muẓaffar argue that any evidence that has the potential to

¹⁹⁹ It must be noted that there is discrepancy within the Sunni Schools regarding the epistemic validity of each of these sources, and thus it would be inaccurate to say that all Sunnis, in practice, accept *ẓann* in the same manner. For instance, it is commonly accepted that the Sunni Ḥanafī School accepts more *ẓann* than the Ḥanbalī School. Nonetheless, the Sunni tradition – as a collective body – theoretically accepts the epistemic validity of *ẓann*, or as mentioned *ghalabat al-ẓann*. For a detailed study of Sunni legal epistemology see Hallaq, *A History of Islamic Legal Theories*; also see Zysow, *The Economy of Certainty*

reveal knowledge of Sharī‘a precepts qualifies to receive an epistemic evaluation in the discourse of Uṣūlī legal theory. Thus, in his legal epistemology, Muḏaffar not only evaluates the epistemic validity of the Uṣūlī four-fold categorisation of evidence – i.e. Qur’ān, *sunna*, *ijmā‘* and *‘aql* – but he also evaluates the epistemic validity of infamous evidence such as *qiyās* and *shuhra*, which are unanimously held to give mere *ẓann* in the mainstream Shiite discourse. Undoubtedly, the epistemic evaluation of a wider range of evidence is consistent with, and of paramount importance to, Uṣūlī legal theory, because it is only possible to confirm whether or not a particular evidence that gives rise to *ẓann* is substantiated by the Divine Lawgiver **after** it is subjected to epistemological evaluation.

A thorough analysis of all the evidence evaluated in the Uṣūlī discourse is indeed a critical study, however this is beyond the scope of this research. This chapter will specifically present a critical analysis of Muḏaffar’s epistemic evaluation of the isolated report, due to two key reasons. Firstly, as illustrated in Chapter One, during the initial phase of the historical development of Shiite legal theory, the utilisation of the isolated report was relentlessly denounced, based on the premise that its epistemic validity or evidentiary nature was the result of a Sunni innovation as it gave rise to mere *ẓann* qua *ẓann*. However, within a matter of decades, it became almost unanimously recognised as an independent source within Uṣūlī legal discourse, and this position has been sustained until the present day. Secondly, it is commonly suggested in the writings of prominent commentators of Muslim Law that the Uṣūlī

understanding of Sharīʿa precepts is predominantly developed through inference from textual evidence²⁰⁰. This suggestion is certainly not exaggerated, as Muḏaffar in his final analysis of the epistemic evaluation of ʿaql (reason) as an independent evidence, or source of knowledge, of Sharīʿa precepts concludes that:

There is no way in which reason can know that, without referring [to textual evidence], that its judgment regarding an action is in correlation with [the judgment] of the Divine Lawgiver. The reason for this is clear, for indeed the precepts (*aḥkām*) of Allah are dictated (*tawqīfiyya*), and it is not possible to know them [by any other means] except by the way of hearing them from the informer of the precepts who is approved by the All Mighty for informing them²⁰¹.

It can be inferred that in accordance with the Uṣūlī understanding, or at least Muḏaffar’s understanding, the only evidence that gives knowledge – whether *qaṭʿī* or *ẓann al-khāṣ* - of Sharīʿa precepts is the textual evidence of the Qurʾān and *sunna*. In light of this, if the majority of the corpus of Uṣūlī derivations of Sharīʿa precepts are in fact derived from textual evidence, then this is certainly a good enough reason for specifically focusing on Muḏaffar’s epistemic evaluation of the isolated report, for indeed it constitutes as being the largest body of textual evidence. Thus, it is clearly the most sought after *ẓannī*

²⁰⁰ This is pointed out in the introduction, see Weiss, *The Spirit of Islamic Law*, p. 39

²⁰¹ See Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 111

evidence that requires substantiating within the Uṣūlī tradition, and it is not implausible to suggest that the whole discourse of legal epistemology within the folds of Shiite jurisprudence has evolved in order to establish the epistemic validity of the *ẓann* created by the isolated report.

4.2 Sunna and its Modes of Transmission

Owing to the fact that the majority of Sharīʿa precepts are inferred or derived from textual evidence, there exists no doubt that the reported *sunna* of the *maʿṣūm* is singlehandedly one of the most important sources of legal knowledge within the Uṣūlī, if not the Muslim, jurisprudential discourse. There is a general consensus that the number of legal verses in the Qurʾān amount to approximately 500 verses, signifying that despite the Qurʾān being the primary textual source of legal knowledge, it alone is not sufficient in indicating comprehensive knowledge of Sharīʿa precepts. Accordingly, alongside the Qurʾān, the *sunna* is independently utilised in the juristic process of deriving Sharīʿa precepts, as it provides access to a broad range of Sharīʿa precepts that are not holistically detailed in the Qurʾān.

In the Muslim jurisprudential tradition, the *sunna* is defined as “the word of the Prophet, his action, and his tacit endorsement²⁰².” This understanding of *sunna* is universal for both the Shiites and the Sunnis, as it is theologically accepted by all Muslims that the Prophet Mohammad is the source of Sharī‘a, inasmuch as he has been divinely appointed by God as His representative and as a lawgiver. Therefore, the epistemic validity of the *sunna* as an independent source of Sharī‘a precepts is undisputedly accepted within the Muslim jurisprudential discourse. Nevertheless, it must be noted that the main argument used to establish this is that God – or the Divine Lawgiver – Himself establishes this in numerous verses of the Qur’ān. For instance, the Qur’ān categorically states that: “Nor does he [the Prophet] speak from [his own] desires²⁰³”, or: “Indeed the messenger of Allah is an excellent example to follow for anyone whose hope is Allah, and the last day, and [remembers] Allah often²⁰⁴.” Since God Himself claims that the Prophet is the best example of all, and that he only says that which God wishes, this signifies that He wants Muslims to follow and act in accordance with the *sunna* or the words, actions and tacit endorsements of the Prophet.

However, the Shiite thought differs to the Sunnis in that it does not only accept the epistemic validity of the *sunna* of the Prophet, but it also consents to the epistemic validity of the *sunna* of the impeccable Shiite Imams. In Shiite

²⁰² See Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 55; Faḏlī, *Durūs fī uṣūl fiqh al-Imāmiyya* vol. 1, p. 167; Hallaq, *A History of Islamic Legal Theories*, p. 10

²⁰³ Qur’ān, 53:3

²⁰⁴ Qur’ān, 33:21

theology, the impeccable (*ma'ṣūm*) Imams are not merely recognised as narrators or interpreters of the *sunna* of the Prophet, rather they are accepted as the divinely appointed successors of the Prophet, and thus succeed him in every aspect, which includes being the source of knowledge of Sharī'a precepts. Therefore, in the Shiite tradition, the *sunna* of the impeccable Imams possesses the same value as the *sunna* of the Prophet²⁰⁵.

The *sunna* of the *ma'ṣūm* – whether the Prophet or the Imams – is transmitted in the form of a statement or report that is commonly termed as either '*ḥadīth*' (plural '*aḥādīth*') or '*khabar*' (plural *akhbār*)²⁰⁶, and the science that is specifically dedicated to discussing the authenticity of the transmitted reports is known as '*ilm al-ḥadīth*'. In one of the earliest Shiite works entitled *Dirāyat al-Ḥadīth*, Ibn Shahīd al-Thānī defines '*ilm al-ḥadīth*' as:

A science in which the text of the *ḥadīth* is investigated, with its chain of transmission, from the authentic to the faulty to the weak, along with all that is needed to distinguish the acceptable from the unacceptable²⁰⁷.

²⁰⁵ See Ḥillī, *Kashf al-murād*, pp. 179-188

²⁰⁶ It must be noted that the term *ḥadīth* is often referred to as “tradition”, whereas the term *khabar* is often referred to as “report”. However, it is found that in the context of hadith studies, both these terms are usually used interchangeably and technically refer to “a statement carrying the speech, action or tacit approval of an impeccable [*ma'ṣūm*]” see Fadlī, 'Abd al-Hādī. *Introduction to Ḥadīth including Dirāyat al-Ḥadīth by al-Shahīd al-Thānī*. Trans. Nazmina A. Virjee (London: ICAS, 2002), p. 19.

²⁰⁷ See *ibid*, p. 47

It becomes apparent from this that the study or the purpose of *‘ilm al-ḥadīth* is to classify the authenticity of a transmitted report, by determining whether it is authentic (*ṣaḥīḥ*), good (*ḥasan*), dependable (*muwaththaq*), or weak (*ḍa‘īf*)²⁰⁸, and based on its classification, it is determined whether the report can be accepted or not as a source of knowledge. One of the chief requirements of a *mujtahid* is that he not only has knowledge of other disciplines such as logic, theology and linguistics, but also has a thorough understanding of *‘ilm al-ḥadīth*. Indeed, since knowledge of a significant proportion of Sharī‘a precepts is inferred or derived from the reported tradition of the *ma‘ṣūm*, a *mujtahid* must possess an acute awareness of being able to determine the authenticity of a transmitted report.

However, the authenticity of the transmitted reports of the *sunna* has been severely criticised in Western Orientalist literature, with the most profound criticism being provided by Ignaz Goldziher (d.1921), who inducted a critical study on the authenticity of the transmitted reports in his analysis of the evolution of Muslim theology and dogmatic beliefs. His analysis led him to conclude that a great majority of reports that claim to be from the time of the Prophet were in fact inaugurated in a much later period, and thus he claimed

²⁰⁸ It must be noted that a *ṣaḥīḥ* report is one in which all the narrators in its chain of transmission are Shiite and are trustworthy. All scholars consider a *ṣaḥīḥ* report to be valid. A *ḥasan* report is where at least one of the narrators in the chain is not known to be trustworthy, however has been praised by the biographers of narrators –or experts in *al-rijāl*). Many scholars consider this type of report to be valid. A *muwaththaq* report is one in which all reporters in a chain of transmission are trustworthy, but are not necessarily Shiite. Most of the scholars consider this type of report to be valid. Lastly, a *ḍa‘īf* report is one in which it is known that at least one of the narrators in the chain of transmission is not trustworthy or is unknown. According to many scholars, a weak tradition can only be relied upon if mujtahids of the past have acted in accordance with it. See Faḍlī, *Mabādī al-uṣūl*, pp. 29-30.

that they were spurious²⁰⁹. Goldziher's study was further developed by Joseph Schacht (d.1969), who insisted that as far as the transmitted reports that reveal knowledge of Sharī'a precepts are concerned, they must be considered fictitious until they are proven to be authentic²¹⁰. In essence, the main criticism from the Orientalists towards the mainstream Muslim scholarship was that it was wrong to consider transmitted reports as being a true representation of the actual words of the Prophet regarding dogmatic and legal precepts. Therefore, the Orientalists uphold that the epistemological yardstick instilled by Western scholarship for assessing the authenticity of the transmitted reports is far more critical than the measure that is offered within the mainstream Muslim scholarship.

However, the Orientalist argument is completely disregarded by Hallaq, who views the Orientalist discourse concerning the non-authenticity of transmitted reports as "pointless"²¹¹. Hallaq argues that a critical epistemological appreciation considering the authenticity of transmitted reports was actually first discovered in the Muslim jurisprudential discourse of legal theory, which he claims has escaped the attention of modern hadith scholarship. Muslim legal theory principally classifies transmitted reports into two epistemological categories, namely *mutawātir* (widely narrated report) and *khabar al-wāḥid*

²⁰⁹ See Goldziher, Ignac et al. *Muslim Studies* (London: George Allen and Unwin, 1971) For a summary of Goldziher's position see Robson, James. "Muslim Tradition: The Question of Authenticity," *Memoirs and Proceedings, Manchester Literary and Philosophical Society*, (1951) pp. 84-102

²¹⁰ See Schacht, Joseph. *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964)

²¹¹ See Hallaq, Wael B. "The Authenticity of Prophetic Ḥadīth: a Pseudo-problem" *Studia Islamica* 89 (1999) p.77

(the isolated report). The former is accepted as a transmitted report that has the capacity of providing certain knowledge (*qatʿ*), whereas the latter is accepted as a transmitted report that is merely capable of providing conjectural knowledge (*ẓann*). Hallaq thus concludes his critique of the Orientalist position by stating that:

To sum up, Western scholarship has concentrated its attention upon an area of traditional Muslim discourse that is not particularly instructive. The traditionalist discourse is stated in terms that are largely incongruent with the epistemic evaluation of *ḥadīth*, and evaluation that is directly relevant and indeed central to the Islamicist paradigm of historical research. If minimal traces of this epistemic interest are to be found in the traditionalist discourse, it is because legal theory commended a measure of attention from the traditionalists. The epistemic evaluation of *ḥadīth* was finally articulated and elaborated by the legal theoreticians and jurists, and it is in this area of traditional discourse that Western scholars should have begun their enquiry – if such an enquired need at all be embarked upon²¹².

In light of the epistemological categorisation of transmitted reports into *mutawātir* and *khavar al-wāḥid*, Hallaq accurately argues that the mainstream Muslim scholarship within legal circles already accepted that a large number of

²¹² *ibid.*, p. 88

the transmitted reports gave rise to mere *ẓann*, and hence it was a futile effort by the Orientalists to suggest something that was already clearly explicated within the Muslim jurisprudential discourse.

Although Hallaq's study primarily focuses on the mainstream Sunni jurisprudential discourse, it can convincingly be argued that his understanding can be extended to the Shiite jurisprudential discourse, as the origin and development of Shiite legal theory was largely inspired by the Sunni discourse²¹³, and the Shiite jurisprudential discourse too maintains a two-fold distinction of the different modes from which the reports of the *ma'ṣūm* are transmitted. In essence, the Shiites, like the Sunnis, accept the epistemological categorisation of transmitted reports into *mutawātir* and *khabar al-wāḥid*.

4.2.1 *Mutawātir*: The *Qaṭ'ī* Mode of Transmission

In the discourse of *ʿilm al-ḥadīth*, every transmitted report has two components, namely *sanad* and *matan*. The former refers to the 'chain' of narrators or reporters who have transmitted a particular report over generations from the time of the *ma'ṣūm*, whilst the latter refers to the actual "content" of the report, which indicates the *sunna*, i.e. the actual word, action or tacit approval of the *ma'ṣūm*. In legal theory, a transmitted report is deemed as a

²¹³ See Chapter One

qaṭʿ evidence if its *sanad* (chain of transmission) reaches the level of *mutawātir*. Ibn Shahīd al-Thānī expresses:

A *mutawātir* is a report that has so many narrators that it is conventionally impossible for them to all have agreed upon its fabrication. This multitude must be fulfilled on all the levels or generations of reporters, in such a way that the beginning of the chain is the same as its end, and the middle of the chain is congruous with the two ends. The number of reporters has not been stipulated or restricted to an exact figure, as some people believe, but rather it serves to generate certitude²¹⁴.

Thus, a *mutawātir* is a report that is so widely narrated that it produces *qaṭʿ/ʿilm* that it has not been fabricated or misunderstood by any of the reporters in its chain of transmission over the generations. Ghazālī classifies knowledge provided by a *mutawātir* report as necessary knowledge (*al-ʿilm al-ḍarūrī*) as opposed to acquired conjectural knowledge (*al-ʿilm al-naẓarī*). The former type of knowledge is akin to *ʿilm al-ḥuḍūrī*, inasmuch as it is defined as knowledge that “naturally imposes itself upon the intellect.” Meanwhile, the latter type refers to knowledge that is attained through the process of deductive reasoning, and since it involves the process of deduction, it is described as knowledge that is prone to error. In contrast, the knowledge that is attained

²¹⁴ See Faḍlī, *Introduction to ḥadīth*, p. 20

through *mutawātir* reports is knowledge that is necessary, in that it cannot be prone to error. Moreover, since it “necessarily” gives knowledge, Ghazālī expounds that it can be used as a source from which other knowledge can be derived²¹⁵.

Muẓaffar, who in his *al-Manṭiq* categorises *mutawātir* reports under the title of *al-yaqīniyāt*, also maintains a similar distinction to Ghazālī. By classifying a *mutawātir* report as having the capability of providing *yaqīn*, Muẓaffar expounds that it can never be erroneous, as its indication – as with the indication of anything that has the ability of providing *yaqīn* – in actuality always accurately corresponds to the objective reality (*wāqi‘ī*). In his discourse of both logic and legal theory, Muẓaffar defines *mutawātir* reports as:

Propositions that the soul [or the self] (*nafs*) is at peace (*sukūn*) with, and doubt (*shakk*) is alleviated with them, and a psychological state of *jazm* is acquired for the one who possesses them with *qaṭ‘*. This is because [regarding a] widely narrated report, it is impossible for a group to concur on a fabrication, and it is [also] impossible for it to coincide on making a mistake in reporting. Like we know of the remote countries that exist although we have not seen them, and that the Noble

²¹⁵ See Weiss, Bernard G. “Knowledge of the Past: The Theory of “*Tawātur*” According to Ghazālī” *Studia Islamica* 61 (1985) p. 100

Qur'ān was revealed to the Prophet Muḥammad may peace be upon him and his family²¹⁶.

It can be argued that Muḥaffar extends the ambiguity discussed in the previous chapter regarding the definition of *qaṭ'*, as on one hand, he categorises a *mutawātir* report as having the ability of giving *qaṭ'* in the context of *yaqīn*, whilst on the other, he states that it has the ability of giving *qaṭ'* in the context of *sukūn al-naḥs*. Indeed, the former signifies that the indication of a *mutawātir* report always accurately corresponds to the objective reality (*wāqī'ī*), whereas the latter signifies that the indication does not necessarily always correspond to the objective reality, rather the individual who possesses the *mutawātir* report may have peace with oneself (*sukūn al-naḥs*) that all doubt has been alleviated. However, such *sukūn al-naḥs* or “peace with oneself” does not necessarily imply that the *mutawātir* report, in actuality, corresponds to the objective reality, rather it is possible for one to possess compound ignorance (*jahl al-murakab*), inasmuch as whilst he or she believes that the indication of the *mutawātir* report corresponds to the objective reality, in actuality this is not the case. Thus, there is ambiguity regarding whether Muḥaffar advocates that a *mutawātir* report in actuality corresponds to the reality, or whether it merely gives *sukūn al-naḥs*. This uncertainty can be illustrated using the following example: if the proposition “America exists” was revealed to Zayd by a large number of people, then does this mean that America actually exists in the

²¹⁶ Muḥaffar, *Uṣūl al-fiqh* vol. 2, p. 60; Muḥaffar, *al-Manṭiq*, pp. 286-287

objective reality? Or does it mean that Zayd is satisfied in believing that America exists, although it may not exist in reality?

Although Muḏaffar defines *qaṭʿ* as *jazm*, in that it has the ability to give rise to both *yaqīn* and *jahl al-murakab*, in his final analysis he, in line with other Uṣūlīs, maintains that *qaṭʿ* is synonymous with *yaqīn*. Thus, with regards to the earlier proposition, if a large number of people were to claim the proposition “America exists”, then in accordance with the Uṣūlī thought, America does in actuality exist in the objective reality. In spite of this, the number of available *mutawātir* reports that amount to explicating the *sunna* of the *maʿṣūm* are significantly few, and difficult to locate within the corpus of *ḥadīth* literature²¹⁷. In other words, although it is theoretically accepted in the Muslim legal discourse that a *mutawātir* report is *qaṭʿī*, in practice such a report is very rare to find. As a result, most of the Sharīʿa precepts that are derived from textual sources are in fact obtained from the *ẓannī* textual evidence of *khavar al-wāḥid*.

4.2.2 Khavar al-wāḥid: the Ẓannī Mode of Transmission

In Muslim legal theory, a transmitted report is deemed as a *khavar al-wāḥid* (the isolated report) if its *sanad* (chain of transmission) fails to reach the level of *mutawātir*. It is commonly mistaken that an isolated report refers to the

²¹⁷ See Hallaq, “The Authenticity of Prophetic Ḥadīth: a Pseudo-problem,” pp. 79-80

sunna of the *maʿṣūm* that is transmitted by a single – or one – chain of transmission. However, this is not necessarily the case, for in the Uṣūlī discourse an isolated report can refer to *sunna* that is transmitted by more than a single chain of transmission, and hence an isolated report can have two, three, four etc. chains of transmission, as long as it does not reach the level of *qaṭʿ*²¹⁸. Indeed, if a transmitted report reaches the level of *qaṭʿ*, then it can no longer be classified as an isolated report or *khābar al-wāḥid*, as it is then a *mutawātir* report. In essence, any transmitted report that gives *qaṭʿ*, or removes doubt that it is fabricated, is classified as a *mutawātir* report, whereas any transmitted reported – irrespective of how many chains of transmission it has – that fails to give *qaṭʿ*, inasmuch as there always exists the possibility of it being fabricated, is classified as an isolated report.

The Uṣūlīs primarily divide an isolated report into two types, namely *khābar al-wāḥid* that is associated with evidence (*al-maḥfūẓ bi-l qarāʿin*) and *khābar al-wāḥid* that is not associated with evidence (*ghayr al-maḥfūẓ bi-l qarāʿin*). The former is deemed as a *qaṭʿī* source that produces knowledge (*ʿilm*) of Sharīʿa precepts, whereas the latter is not. For instance, regarding a *khābar al-wāḥid* that is associated with evidence, Shomali points out that:

This is a narration, which produces certainty due to some other evidence. For example, the content of the narration is of such high

²¹⁸ See Muṣaffar, *Uṣūl al-fiqh* vol. 2, pp. 21-22

standard that there can be no doubt that it is from the Prophet (S) or his household (A), like the salutation of al-Jāmi‘ah. Or the narration is such that it speaks against those in power – it would be very unlikely that a narration of this type would have been fabricated, as there would be no benefit in this for the fabricator²¹⁹.

Here, Shomali assumes that such isolated reports are epistemologically valid due to two reasons. Firstly, he elucidates that there are certain aspects of knowledge – such as the content of the salutation of *al-Jāmi‘ah* – that only the *ma‘šūm* have access to. This is a theological assumption that is argued for and proven in the discourse of theology, and Shomali simply accepts it without providing any further analysis. However, it can be suggested that this is a naïve assumption, because in the discourse of Shiite theology, theologians have in fact differed in their views of how much access the *ma‘šūm* have to knowledge in comparison to a fallible human being²²⁰. Secondly, Shomali assumes that the individuals who have played a major role in fabricating *ḥadīth* literature only did so to establish the regime that was in power. However, it can quite easily be counter-assumed that it was also possible for those who were **against** the regime to fabricate reports and falsely attribute them to the *ma‘šūm*.

²¹⁹ See Shomali, Mohammad A. *Principles of Islamic Jurisprudence: An Introduction to Methodology of Fiqh* (Qum: The Organization of Abroad Howza and Islamic Schools, 2006), p. 30

²²⁰ See Ḥillī, *Kaṣḥ al-murād*, pp. 157-159; Modarressi, *Crises on Consolidation in the Formative Period of Shia Islam*, p. 9, and pp. 46-47

Nevertheless, the isolated report that is associated with evidence is not the subject matter of epistemic evaluation, as by its very definition it is a source that gives rise to certainty (*qaṭʿ*) and knowledge (*ʿilm*), due to it being actually associated with evidence. As a result, Muḏaffar upholds that it is futile to evaluate its epistemic validity, as anything that is a source of certainty or knowledge is deemed as epistemologically valid in itself. Rather, he maintains that the subject matter of epistemic evaluation is the isolated report that is not associated with evidence. Indeed, this type of isolated report does not produce *qaṭʿ*/*ʿilm*, rather it has the default position of just producing *ẓann*, and thus in order to deem it as epistemologically valid, it is necessary that it is substantiated by general evidence that proves that it is a valid source knowledge²²¹.

Muḏaffar further subdivides the isolated report that is not associated with evidence into two types. The first type is one which gives rise to mere *ẓann*, whereas the second type gives rise to *itmiʿnān* (contentment). An exclusive feature of the latter type of isolated report is that it produces a high level of conjecture (*ẓann*) that gives contentment to the *mukallaf* that it is not fabricated and that it is from the *maʿṣūm*. However, despite this distinction, Muḏaffar states that the Uṣūlīs claim that even if an isolated report produces a high level of conjecture that gives contentment, it is not deemed as epistemologically valid until it has been subjected to epistemic evaluation and is substantiated by

²²¹ Muḏaffar, *Uṣūl al-fiqh* vol. 2, pp. 22-23

qaṭʿ evidence²²². This indeed ascertains the fact that the Uṣūlīs are strict in maintaining that anything other than *qaṭʿ* cannot be accepted in the juristic derivation of Sharīʿa precepts. Shaykh Ṭūsī (d.460/1067), who has been described as one of the earliest Shiite Uṣūlīs to accept the isolated report as an epistemologically valid source of knowledge, points out:

“Whoever acts with *khavar al-wāḥid*, only acts with it when there is evidence that indicates upon the obligation of acting with it, whether it is from the book [i.e. the Qurʾān], or *sunna*, or *ijmāʿ*. If there is no [evidence] then he is acting with something other than knowledge.”²²³

Therefore, *khavar al-wāḥid* qua *khavar al-wāḥid*, or *khavar al-wāḥid* that is not associated with any evidence, is deemed as *ẓannī*, and in accordance with the Uṣūlī thought it cannot be accepted in the juristic derivation of Sharīʿa precepts until its epistemic validity is established. Accordingly, the next section will critically analyse the “*qaṭʿ*” evidence that Muẓaffar presents to establish the epistemic validity of *khavar al-wāḥid* qua *khavar al-wāḥid*.

²²² *Ibid.*

²²³ Ṭūsī’s view is quoted by Muẓaffar, see Muẓaffar, *Uṣūl al-fiqh* vol. 2, p. 62

4.3 Evidence from the Qur'ān for the *Hujjiyya* of *Khabar al-wāḥid*

In the Muslim jurisprudential tradition, the Qur'ān is considered as the primary source of knowledge of Sharī'a precepts. The authenticity of the Qur'ān is not categorically proven or established in the discourse of legal theory; rather it is taken as a basic assumption. Accordingly, it is unanimously upheld as a *qaṭ'ī* source of knowledge, because its chain of transmission is considered as *mutawātir* i.e. many narrators over generations have reported the verses of the Qur'ān, to the extent that it is impossible for them all to have agreed upon its fabrication, and thus the verses produce *qaṭ'ī* 'ilm in the mind of the *mukallaf* that they have not been fabricated or misunderstood.

However, although the *sanad* of the Qur'ān is deemed as *qaṭ'ī*, the textual indication of the Qur'ān – or for that fact any *mutawātir* report – is either deemed as explicit (*naṣṣ*) or apparent (*ẓāhir*). The former exists when there is no doubt – or there is absolute certainty (*qaṭ'ī*) – regarding the intention of the Divine Lawgiver and the meaning of the textual indication of a verse or report, inasmuch as it only carries one meaning and there is no possibility of it meaning anything otherwise. For instance, Faḍlī gives the example of *naṣṣ* from the textual indication of the following verse:

“And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient.”²²⁴

Faḍlī points out that this verse unambiguously reveals the intention of the Divine Lawgiver, as the word “ever” explicitly indicates that one is prohibited to ever accept the testimony of a person who wrongly accuses, as opposed to only during the specific instance of when a person wrongly accuses²²⁵. Therefore, in essence, when a *mutawātir* – whether it is a verse of the Qur’ān or a report of the *sunna* – explicitly indicates the intention of the Divine Lawgiver, the Uṣūlī School maintains that its indication is deemed as being *qaṭ’ī* and can be used in the juristic derivation of Sharī’a precepts without any further epistemic evaluation.

On the other hand, a textual indication is deemed as apparent (*ẓāhir*) when there is doubt – or there is no certainty – as to what the intention of the Divine Lawgiver is and what is actually meant by the textual indication of a verse or report. The Uṣūlīs recognise it as “apparent” because whilst the textual indication of such a verse or report carries the possibility of more than one meaning, amongst the various meanings it carries, a particular meaning stands out or is more “apparent” than the other meaning(s). For instance, if it were hypothetically stated that the aforementioned verse did not contain the word

²²⁴ Qur’ān 24:4

²²⁵ Faḍlī, *Mabādī al-uṣūl*, pp. 37-38

“ever”, then it is possible to affirm that its indication could have more than one meaning; it could either mean that the testimony of a person who wrongly accuses cannot be accepted in the specific instance of when he wrongly accuses, or it could mean that his testimony can never be accepted after he has already wrongly accused someone once. Thus, in such a case a *mujtahid* initially has doubt in his juristic derivation of Sharī‘a precepts with regards to which of the two situations is prohibited, and he is required to further evaluate which meaning is more apparent in indicating the true intention of the Divine Lawgiver, and derive the Sharī‘a precept accordingly.

Therefore, when the textual indication of a *mutawātir* is not explicit (*naṣṣ*) but rather is apparent (*ẓāhir*), then the Uṣūlī School maintains that its indication is *ẓannī*, despite its chain of transmission being *qaṭ‘ī*²²⁶. Nevertheless, the Uṣūlīs recognise that access to *naṣṣ* is significantly restricted and at times even impossible. This is because a great number of verses of the Qur’ān cannot be interpreted to have a single meaning, but appear to offer more than one meaning. As a consequence, the Uṣūlīs have exerted a remarkable effort in establishing hermeneutical methods that can be used to interpret the linguistic significations of textual sources, in order to arrive at an apparent textual indication.

²²⁶ The Uṣūlīs unanimously agree that the indication of *naṣṣ* is *qaṭ‘ī*, whereas the indication of *ẓāhir* is *ẓannī*, see Anṣārī, *Farāi‘d al-uṣūl* vol. 1, pp. 312-331; Khurāsānī, *Kifāyat al-uṣūl* vol. 2, pp. 47-57; Muẓaffar, *Uṣūl al-fiqh* vol. 2, pp. 23-24; Ṣadr, *Durūs 1* vol. 1, pp. 303-308; Faḍlī, *Durūs fi uṣūl fiqh* vol. 2, pp. 323-335; Ḥaydarī, *al-Ẓann*, pp. 233-273

However, at this juncture it is vital to highlight that by substantiating the epistemic validity of *ẓannī* sources of law by relying on the *ẓannī* apparent indication the Qur'ān, it is possible for one to err. For example, this could lead one to substantiating the *ẓannī* evidence of *khavar al-wāḥid* as being epistemologically valid, whereas in reality it may not be. As claimed by Muḏaffar:

It cannot be hidden that the noble verses that are claimed to prove the epistemic validity of *khavar al-wāḥid* are not explicit (*naṣṣ*) and [do not] have a *qaṭ'ī* indication. Rather, the maximum that can be claimed is that they are apparent (*ẓāhir*) in indicating this.

If this is the case, then one can challenge that it is necessary, as established, that the evidence that proves the epistemic validity [of something] has to be *qaṭ'ī*. Therefore, it is not correct to prove [the epistemic validity of *khavar al-wāḥid*] by verses that are *ẓannī* in their indication, as that is [like] proving the epistemic validity of *ẓann* with *ẓann*, even though its chain of transmission is *qaṭ'ī*²²⁷.

In response to this, the Uṣūlī School evaluates and establishes the epistemic validity of the hermeneutical primacy of apparent meaning (*hujjiyya aṣālat al-ẓuhūr*). According to this hermeneutical primacy, when there is no associated

²²⁷ Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 23

evidence to suggest otherwise, the apparent meaning of a textual source is taken to be epistemologically valid. Thus in line with this, if a *mujtahid* finds that a textual source is open to various meanings or interpretations, he is required to act in accordance with the interpretation that is most apparent. As a result, if he derives a Sharīʿa precept on the basis of the hermeneutical primacy of apparent meaning, then he cannot be held accountable, but rather is granted with excusability even if his derivation is in actuality contrary to that which is in the *wāqīʿ*. On the other hand, if he fails to derive a Sharīʿa precept based on the hermeneutical primacy of apparent meaning, and consequently derives a Sharīʿa precept that in actuality is contrary to that which is the *wāqīʿ*, then he is not granted with excusability, but instead is accountable and can be subjected to chastisement²²⁸.

Therefore, it becomes evident that when substantiating the epistemic validity of the isolated report through the textual sources of either the Qurʾān or *ḥadīth*, the Uṣūlīs rely on, and assume, the epistemic validity of the hermeneutical primacy of apparent meaning. It can indeed be suggested that a critical analysis of how the Uṣūlīs evaluate the epistemic validity of the hermeneutical primacy of apparent meaning, and the effect it has on the textual derivation of Sharīʿa precepts, is of paramount importance. However, this is beyond the scope of this research. Accordingly, when evaluating Muḥaffar’s substantiation of the epistemic validity of the isolated report, this chapter will uphold the

²²⁸ The epistemic validity (*ḥujjiyya*) of the hermeneutical primacy of apparent meaning is unanimously accepted in the Uṣūlī discourse, see *ibid* pp. 121-122 and pp. 128-136; Ḥaydarī, *al-Ẓann*, pp. 233-273; Faḍlī, *Durūs fī uṣūl fiqh* vol. 1, pp. 330-335

assumptions made by Muḏaffar, and assume the epistemic validity of the hermeneutical primacy of the apparent indication.

4.3.1 The Verse of *Naba'*

“If a miscreant (*fāsiq*) brings you a piece of news (*naba'*) then scrutinise (*fatabayyanū*) [it] so that you do not harm others through ignorance and then have to repent for what you have done.”²²⁹

In Uṣūlī legal theory, a textual statement is described to have two types of significations; it can either have an articulated signification (*dalālat al-manṭūq*), whose apparent indication explicitly reveals the intent of the Divine Lawgiver, or it can have an implied signification (*dalālat al-mafhūm*), whereby the intent of the Divine Lawgiver can be understood through the implicit indication of that which is articulated. The Uṣūlīs commonly use the *dalālat al-mafhūm* of this verse as a significant evidence that proves and substantiates the epistemic validity (*ḥujjiyya*) of the isolated report. However, prior to detailing how Muḏaffar does this, it is noteworthy that the Uṣūlīs largely agree that the

²²⁹ Qur'ān 49:6

term *naba'* (news) is synonymous with the technical term *khavar* (report)²³⁰.

As it can be read, the *dalālat al-manṭūq* of this verse sets forth a condition, whereby it apparently indicates on the protasis “if a *fāsiq* comes with news” and the apodosis “then scrutinise it”. Based on this, the Uṣūlīs conclude that the Divine Lawgiver intends that there is only a need to scrutinise a piece of news or report (*khavar*) when it is brought by a *fāsiq*. On the other hand, the *dalālat al-mafhūm* of this verse leads to a conditional implication (*al-mafhūm al-sharṭ*), in accordance with which the negation or the non-actualisation of the protasis necessarily implies the negation or the non-actualisation of the apodosis. Accordingly, Muṣaffar interprets the signification of the conditional implication of this verse to indicate that “if a non-*fāsiq* – also referred to as an ‘*ādil* (just person) – comes with news, then do not scrutinise it”²³¹.

This illustrates that by interpreting the conditional implication of this verse to mean that a person whose moral probity is established then there is no need to scrutinise the news he reveals, Muṣaffar is able to satisfactorily conclude that when an ‘*ādil* person is to report the *sunna* of the *ma ṣūm*, then his report must be accepted without any scrutiny²³². Therefore, Muṣaffar signifies that the only reports that are accepted to be epistemologically valid in the juristic derivation

²³⁰ See Gleave, Robert. “Modern Shī‘ī Discussion of *Khavar al-wāḥid*: Ṣadr, Khumaynī and Khū‘ī” in Tottoli, Roberto (ed.) *Oriente Moderno: Hadith in Modern Islam*, (Roma: Istituto per L'Oriente C.A. Nallino, 2002), p.182; Muṣaffar, *Uṣūl al-fiqh* vol. 2, p. 64;

²³¹ *Ibid*, pp. 65-67

²³² *Ibid*.

of Sharīʿa precepts are those that are transmitted by people who are recognised for their moral probity.

Indeed, there is always a possibility of a *ʿādil* person to misunderstand or err when reporting the *sunna* of the *maʿṣūm*. However, such a prospect is ignored in the Uṣūlī discourse, for the Uṣūlīs predominantly conclude that in accordance with the apparent indication of the conditional implication of the aforementioned verse, the Divine Lawgiver Himself gives permission to follow and act in accordance with the *ẓannī* report of a *ʿādil*²³³. In other words, although it is impermissible to follow and act in accordance with *ẓann*, the *ẓann* that is produced from the report – or the *khavar al-wāḥid* – of a *ʿādil* is substantiated. Thus, in line with this understanding, the primary task of a *mujtahid* is to recognise the biography of any given reporter, as if a reporter is deemed as a *ʿādil*, then his report is accepted as an epistemologically valid source of Sharīʿa knowledge.

However, Khumaynī criticises the predominant Uṣūlī position regarding the ability of the aforementioned verse to substantiate the epistemic validity of the isolated report, by proposing that its conditional implication can actually apparently indicate upon two different significations. He asserts that it can either signify that “if a non-*fāsiq* brings a report, then do not scrutinise it” or it can signify that “if a non-*fāsiq* does not bring a report, then there is no need to

²³³ *Ibid*; also see Gleave, “Modern Shīʿī Discussion of *Khavar al-wāḥid*,” pp.179-194 who analyses how Ṣadr and Khūʾī also maintain the epistemic validity of *khavar al-wāḥid* through evaluating this verse; also see Faḍlī, *Durūs fī uṣūl fiqh* vol. 1, pp. 305-318

scrutinise anything, because there is nothing to scrutinise”²³⁴. Whilst the apparent indication of the former conditional implication is predominantly proposed by the Uṣūlīs, Khumaynī points out that the apparent indication of the latter conditional implication is more plausible under common linguistic custom (*‘urf*). Accordingly, Khumaynī maintains that this verse only signifies that scrutiny should occur when a *fāsiq* comes with a report. However, it is silent, or fails to give any reference, with regards to the case of when a *‘ādil* – or a non-*fāsiq* – comes with news or a report. Therefore, he concludes that this verse alone is insufficient in substantiating the epistemic validity of the isolated report, as its apparent indication neither explicitly nor implicitly indicates on a ruling about a report that is brought by a *‘ādil*. Moreover, Khumaynī points out that even if there is a remote chance of the mainstream Uṣūlīs being right in their interpretation of this verse, this still does not provide sufficient proof for substantiating the epistemic validity of the isolated report, because they fail to offer a valid reason for why one interpretation is preferred over the other.

Nonetheless, at the very least it becomes evident from Khumaynī’s criticism towards the Uṣūlīs camp that since the conditional implication of the aforementioned verse can have two different significations, in accordance with the Uṣūlī discourse it essentially does not have an apparent indication. This is because, as discussed, textual evidence only has an apparent indication (*ẓāhir*) when one of its meanings or significations is **more** apparent than the other, in

²³⁴ See Khumaynī, *Tahdhīb* vol. 2, pp. 152-154

that it is more superior to the other. However, in the case of this verse, one can either choose the mainstream Uṣūlī interpretation or Khumaynī's interpretation, and since both camps deem their interpretations to be more apparent, this in itself is sufficient in demonstrating that this verse does not elucidate upon one apparent indication that can be preferred over another.

It can consequently be claimed that the apparent indication of this particular verse cannot be held as a *qaṭ'ī* evidence that substantiates the epistemic validity of the isolated report. In essence, the verse of *naba'* is not sufficient in revealing that the Divine Lawgiver has given His permission to act contrary to the primary axiom of the non-validity of *ẓann* qua *ẓann*, and as a result it is arguable that the mainstream Uṣūlīs are failing to adhere to the standards they have set within their discourse by referring to this verse as a primary evidence that substantiates the epistemic validity of the *ẓannī* source of *khabar al-wāḥid*.

4.3.2 The Verse of *Nafara*

“And it is not for the believers to go forth all together. Of every group (*firqa*) from them, a sect (*ṭā'ifa*) should go forth (*nafara*), that they may obtain understanding (*tafaqquhu*) in religion, and that they may warn

(*indhār*) their people (*qawm*) when they return to them, so that they may beware.”²³⁵

Muḏaffar provides this verse as the second evidence from the Qur’ān that proves and substantiates the epistemic validity of the isolated report. Nonetheless, he admits that when interpreting the apparent indication of this verse, there is discrepancy amongst the Uṣūlīs and they are divided into two contrasting camps; the first consists of those who believe that this verse fails to indicate the obligation (*wujūb*) of following and acting in accordance with the isolated report, whereas the second camp maintain that this verse does indicate this obligation.

In accordance with the former camp, the aforementioned verse was revealed in the context of lesser *jihād* (battle), as the verses before and after this verse specifically discuss the concept of *jihād*. As a result, some Uṣūlīs – Muḏaffar does not specifically discuss who – interpret this verse to signify that it is not essential for all Muslims to go to battle at once, rather it is obligatory for a group (*firqā*) of Muslims to stay back with the Prophet and seek knowledge and understanding from him, so that when the sect (*tā’ifa*) of those who travel to battle return, they can “warn” or convey the knowledge they have sought from the Prophet to them. For example, a sect of 50 people may go to battle, whilst a group of 100 people remain with the Prophet, so that when the 50

²³⁵ Qur’ān 9:122

people return, the group of 100 are able to reveal to them what they learnt from the Prophet whilst the sect were away.

Meanwhile, according to the latter camp of Uṣūlīs – which also includes Muḏaffar – the verse of *naḑara* was revealed in the context of those who lived away from the Prophet in different towns and villages, indicating that it is obligatory for a sect (*tā'ifa*) of people living at a distance from the Prophet to come to Medina and seek knowledge and understanding of religion from him, and then go back to their respective towns or villages and “warn”, or convey this knowledge, to their people (*qawm*)²³⁶. For example, a sect of people may travel from Yemen and seek knowledge from the Prophet. After seeking such knowledge, they are then able to return to their community in Yemen and reveal to them the knowledge that they have sought from the Prophet. In support of this latter interpretation, Muḏaffar states:

“Although the verses before [this verse] mention *jihād*, indeed this alone is not sufficient in establishing that [this verse has been revealed in the context of *jihād*], for the rest of the verse apparently indicates on a context, which is that *naḑara* (“to go forth”) is for learning (*ta'ilm*) and understanding (*tafaqquhu*)”²³⁷.

²³⁶ See Muḏaffar, *Uṣūl al-fiqh* vol. 2, pp. 67-68

²³⁷ *Ibid*, p. 67

It is thus apparent that in accordance with the former camp, the verses before and after the verse of *nafara* provide a particular context, which signifies that this verse cannot be interpreted to substantiate the epistemic validity of the isolated report. However, the latter camp overlooks the verses that come before and after, rather it analyses and interprets this verse in light of itself. By interpreting the first part of the verse of *nafara* in light of its second part, Muzaffar claims that the former part of this verse (i.e. “it is not for all believers to go forth (*nafara*)”) is associated with the latter part of this verse (i.e. “to obtain understanding”) and as a result, he concludes that its apparent indication signifies the epistemic validity of the isolated report, and maintains that those who have sought understanding or knowledge from the Prophet can go and **report** it to their people.

In order to provide further justification for his interpretation, Muḏaffar elucidates that grammarians have distinguished between two types of statements, namely *jumla inshā’iyya* and *jumla khabariyya*. The former type of statement is used to declare something, whereas the latter type of statement can either be used to declare something or describe something. In accordance with Muḏaffar, when the Divine Lawgiver states: “it is not for the believers to go forth all together”, He uses the particle of negation (*ḥarf al-naḑī*) as opposed to the particle of prohibition (*ḥarf al-nahī*), and thus He starts the verse as “it is not” (“*mā kāna*”) as opposed to “it is prohibited.” Muḏaffar concludes that the choice of words here indicate that the Divine Lawgiver is not declaring, but rather is describing or informing us of something that is already rationally

accepted. He explains that this is because reason necessarily recognises that it is impossible for every person of a particular town or village to go to the Prophet to seek knowledge – or, as he describes, *qaṭʿ* - and thus a sect amongst them may go to the Prophet, obtain *qaṭʿ* and return to their town or village to relay the *qaṭʿ* that they have obtained in a *ẓannī* manner²³⁸. Thus, Muḏaffar suggests that in reality the verse of *naḑara* establishes that not every *mukallaḑ* has access to *ʿilm* or *qaṭʿ*, rather only some do. Fittingly, this verse permits those that have this access to propagate it further, and although their propagation only gives rise to conjecture (*ẓann*), it is required to be accepted nonetheless. Therefore, in support of the context provided by the verse itself, Muḏaffar provides a further grammatical analysis that establishes a rational necessity, which in turn enables him to prove that the Divine Lawgiver Himself revokes the primary axiom of the non-validity of *ẓann* qua *ẓann*, by permitting and substantiating, through the verse of *naḑara*, the epistemic validity of the *ẓannī* source of *ḵabar al-wāḥid*.

Muḏaffar also infers that this verse apparently indicates upon two obligations; the first obligation requires a sect to travel to the Prophet to seek knowledge or understanding of religion, whereas the second obligation requires the sect to return home and “warn” (*indhār*) its people. In light of the latter obligation, Muḏaffar expounds that there is a necessary correlation between the obligation of warning and the obligation of accepting the warning. He explains this by

²³⁸ *Ibid*, p. 69

highlighting it is not necessary for the Divine Lawgiver to deem that “warning” as obligatory if the people who are being warned have the choice to either accept or reject it. Muḏaffar’s deliberation can be illustrated using the following example: when Zayd returns back from the Prophet, it is obligatory for him to warn the people of his town, and since it is obligatory for Zayd to warn, it is obligatory for the people of his town to accept his warning, otherwise it would be pointless for Zayd to have the obligation in the first place. With this in mind, Muḏaffar concludes that since there is a correlation between the obligation of warning and the obligation of accepting, the verse of *naḑara* not only substantiates the epistemic validity of the isolated report, but also demonstrates that it is obligatory to accept its indication²³⁹. This implies that if a *mukallaḑ* chooses to reject following or acting in accordance with the isolated report, he may not only be held accountable, but can also be subjected to chastisement.

As highlighted, in accordance with the Uṣūlī School, the hermeneutical primacy of apparent indication is **only** used when there is an absence of any associated evidence (*qarīna*). However, the differences between the two camps regarding the context in which the verse of *naḑara* was revealed clearly illustrates that this principle has not been upheld here. The first Uṣūlī camp maintains that this verse is unable to substantiate the epistemic validity of the isolated report because it believes that this verse is associated with evidence that indicates that it was revealed in the context of *jihād*. Meanwhile, the latter

²³⁹ *Ibid*, p. 70

Uṣūlī camp maintains that this verse is able to substantiate the epistemic validity of the isolated report because it believes that the second part of the same verse acts as an associated evidence for the first part of the verse.

Therefore, once again in line with the standards provided within the contemporary Uṣūlī discourse itself, this verse cannot be understood by applying the hermeneutical primacy of apparent indication, as it is unanimously accepted as being associated with evidence, albeit there is disagreement on what this associated evidence actually is. Thus, it can either be argued that this verse has no apparent indication at all, or at minimal it can be concluded that although it does have an apparent indication, it cannot be used as *qaṭʿī* evidence to prove or substantiate the epistemic validity of the isolated report.

In addition, even if one was to accept Muḏaffar’s understanding of the context in which the verse of *nafara* was revealed, there still exists the drawback that its apparent indication is dissimilar to the apparent indication of the verse of *nabaʿ*. In line with Muḏaffar’s interpretation, the subject matter of the verse of *nafara* concerns a person who goes to the Prophet in order to seek knowledge or “understanding” (*tafaqqhu*) of religion, inasmuch as he is able to comprehend what he learns from the Prophet. However, Muḏaffar interprets that the subject matter of the verse of *nabaʿ* concerns a narrator who possesses moral probity and transmits a report of the *maʿṣūm*, irrespective of whether he understands and comprehends the content of the report or not. Accordingly, it

is not improbable to assert that the subject matter of the former verse relates exclusively to an individual who has understanding of religion in his role as a scholar (or *faqīh*), and whose function is to spread the knowledge that he acquires, whereas the subject matter of the latter verse concerns a narrator, whose function is merely to transmit reports of the *maʿṣūm*. In light of this, it is possible to suggest that the verse of *nafara* does not apparently indicate on the epistemic validity of the isolated report that is conventionally accepted as being transmitted by a chain of narrators; at most it can only substantiate the epistemic validity of the knowledge that is transmitted by scholars.

Another criticism given is that by definition the Uṣūlīs accept that the isolated report is a report that does not reach the level of *mutawātir*. However, they do not assign an exact figure to the number of chains of transmissions it can have, as they claim that it can either have a single chain of transmission or multiple chains of transmission. However, in contrast to this, based on Muḏaffar’s interpretation, the verse of *nafara* categorically states that it is obligatory for a sect (*tāʾifa*) to go forth to seek knowledge. The term “*tāʾifa*” in Arabic – as the term “sect” in English – denotes an assembly or a group of at least three or more people²⁴⁰. Based on the apparent indication of this verse, an isolated report is only accepted to be epistemologically valid if it is reported by at least three or more people, or has at least three or more chains of transmission.

²⁴⁰ See Wehr, *A Dictionary of Modern Written Arabic*, p. 574; this is also explicated by Muḏaffar, see *ibid*, p. 67

However, Muḏaffar disputes this criticism by claiming that when the Divine Lawgiver says that from every group a sect should go forth, He does not mean that it is obligatory for the sect to warn the people in an assembly together, rather they can individually go and warn people. Muḏaffar endeavours to validate his stance by taking reference to the primacy of absolute meaning (*aṣālat al-muṭlaq*)²⁴¹. In accordance with this principle, when there is no apparent restriction (*muqayyad*) presented in the textual evidence, reason is able to determine that the Divine Lawgiver intends to signify absoluteness (*iṭlāq*) from it, and thus the maximum is taken. This principle is commonly illustrated using the verse from the Qur’ān that states: “Allah has allowed trading²⁴²”. Since this verse does not apparently indicate upon any restriction, it signifies absoluteness insofar as the maximum is taken, and thus this verse is interpreted to signify that all sorts of trade and business are permissible²⁴³. Accordingly, by using the primacy of absolute meaning, Muḏaffar deduces that since the Divine Lawgiver does not restrict or specify how many people from a sect are required to “warn,” reason is able to determine the absoluteness of this verse, and thus the maximum is taken, whereby the obligation of warning can either be carried out by the whole sect combined, or individually by one person from the sect.

After taking into consideration that there are two opposing Uṣūlī opinions on the context in which the verse of *naḡara* was revealed, alongside the existence

²⁴¹ *Ibid*, p. 70

²⁴² Qur’ān 2:275

²⁴³ See Faḡlī, *Mabādī al-uṣūl*, pp. 65-67

of significant discrepancy relating to the apparent indication of the terms “*tafaqqhu*” and “*tā’ifa*”, it can quite easily be contented that this verse does not provide *qaṭ’ī* evidence that suffices in proving the epistemic validity of the isolated report. By adhering to the criteria set by the Uṣūlīs themselves, it cannot be concluded that the verse of *nafara* provides one apparent indication that is superior to its other indications, and thus it is not possible to accurately suggest that this verse produces *qaṭ’ī* knowledge that the Divine Lawgiver has given His permission to act contrary to the primary axiom by following and acting in accordance with the *ẓannī* source of *khavar al-wāḥid*²⁴⁴.

4.4 Evidence from the *Sunna* for the *Hujjiyya* of *Khavar al-wāḥid*

Following his evaluation of the epistemic validity of the isolated report using the aforementioned verses of the Qur’ān, Muṣaffar moves on to consider the textual evidence of *sunna*. As has been established, the transmitted reports that convey the *sunna* are of two types, namely *mutawātir* or *khavar al-wāḥid*. It would be irrelevant to substantiate the epistemic validity of *khavar al-wāḥid* by using *khavar al-wāḥid*, as this would lead to to a circular argument, whereby *ẓann* cannot be used to substantiate the epistemic validity of *ẓann*. In other words, one cannot conclude that: “*khavar al-wāḥid* indicates that *khavar al-*

²⁴⁴ In addition, Muṣaffar also discusses the verse of *ḥurmat al-kitmān* (“the prohibition of concealment” – Qur’ān 2:159). However, he admits that this verse is not sufficient in substantiating the epistemic validity of *khavar al-wāḥid*. See Muṣaffar, *Uṣūl al-fiqh* vol. 2, pp. 71-72

wāḥid is epistemologically valid (*hujja*)”, because in such a case, how does one ascertain that the former *khavar al-wāḥid* is epistemologically valid in the first place? This can be known through either another *khavar al-wāḥid*, or through evidence that is *qaṭʿī*. Undoubtedly, if it is known through the former then this effectively tantamounts to an infinite regress, thus the only way to ascertain whether a *khavar al-wāḥid* is epistemologically valid is through *qaṭʿī* evidence i.e. the *mutawātir* reports, or reports that are associated with *qaṭʿī* evidence.

Muḏaffar distinguishes between two types of *mutawātir* reports, namely *mutawātir lafẓī* and *mutawātir maʿnawī*. The former refers to widely narrated reports that have been preserved verbatim (*lafẓī*), inasmuch as their *matan* (content) has been reported exactly word for word by a wide number of narrators. Meanwhile, the latter refers to widely narrated reports that are not preserved verbatim, inasmuch as their *matan* (content) has not been reported exactly word for word, but they nonetheless effectively convey the same meaning (*maʿna*)²⁴⁵. Muḏaffar claims that there are no *mutawātir lafẓī* that substantiate the epistemic validity of *khavar al-wāḥid*, and thus together with other prominent post-Anṣārī Uṣūlīs²⁴⁶, he establishes that there are no *mutawātir* reports that reveal knowledge that the *maʿṣūm* permit the use of the isolated report in the juristic derivation of Sharīʿa precepts.

²⁴⁵ For a detailed distinction between *mutawātir lafẓī* and *mutawātir maʿnawī* see Faḏlī, *Introduction to Hadīth*, pp. 101-103

²⁴⁶ Anṣārī, *Farāʾid al-uṣūl* vol. 1, pp. 140-144; Khurāsānī, *Kifāyat al-uṣūl* vol. 2, pp. 78-79; Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 82; Faḏlī, *Durūs fī uṣūl fiqh* vol. 1, pp. 285-286

However, Muḏaffar claims that al-Ḥurr al-‘Āmilī’s (d.1104/1693) canonical collection of reports entitled *al-Wasā’il al-Shī’a* contain a record of *mutawātir ma’nawī* that substantiate the epistemic validity of *khavar al-wāḥid*. Using Shaykh Anṣārī’s grouping of these reports, Muḏaffar explicates the following five groups of *mutawātir ma’nawī* that he believes are “not farfetched²⁴⁷” in substantiating the epistemic validity of the isolated report.

4.4.1 First Group

The first group of reports that have the potential to substantiate the epistemic validity of the isolated report are those that are discussed in the chapter of *uṣūl al-fiqh*, which considers the situation when there is a conflict or contradiction (*ta’āruḍ*) between two reports. It must be noted that true contradiction between two conflicting reports only occurs when the chain of narration of both the reports are equal e.g. both the chains contain reporters whose moral probity is established, and thus both reports are authentic (*ṣaḥīḥ*). As a result of this, the contradiction relates to the *matan* (content) of the two reports. For instance, one report indicates that action x is obligatory (*wājib*), whereas the other report indicates that the same action x is prohibited (*ḥarām*).

In such instances, there exist widely narrated non-verbatim reports (*mutawātir*

²⁴⁷ See Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 72

ma' nawī), which apparently indicate that the *ma' šūm* have stipulated certain guidelines upon which it is possible to give preference (*tarjīh*) to one conflicting report over another. Moreover, there are also widely narrated non-verbatim reports, which reveal that when it is not possible to give preference to one of the two conflicting reports, a *mukallaḥ* has the right to choose between following and acting in accordance with either one of the two conflicting reports.

Muḏaffar concludes that since the *ma' šūm* have stipulated what a *mukallaḥ* is required to do in cases when there are two conflicting reports, this necessarily suggests that the *ma' šūm* accept the epistemic validity of the isolated report, for indeed if they had not deemed it as epistemologically valid in itself, then they would not have conveyed a criteria of giving preference in cases where there are two conflicting reports.

However, in response to Muḏaffar's view, Ṣadr suggests that the likes of Muḏaffar are assuming that the subject matter of this group of *mutawātir ma' nawī* are those conflicting reports that fall under the category of isolated reports (*akhbār al-āḥād*) over which there is doubt regarding their authenticity. However, Ṣadr persuasively asserts that this is false by arguing that the subject matter actually relates to those reports that are recognised as authentic²⁴⁸. For instance, if one was to consult with the *ma' šūm* about what to do in cases where there are two conflicting reports, he knows that both reports are from the *ma' šūm* himself, and thus he has no doubt regarding their authenticity.

²⁴⁸ For Ṣadr's discussion, see *Durūs* 2 vol. 2, pp. 159-166

This implies that the subject matter of this group of *mutawātir ma‘nawī* is regarding those reports whose authenticity is *qaṭ‘ī*, and Ṣadr criticises that it is incorrect to assume that its subject matter is regarding the *ẓannī* indication of the isolated report. Thus, in accordance with Ṣadr, this group of *mutawātir ma‘nawī* is unable to substantiate the epistemic validity of the isolated report.

4.4.2 Second Group

The second group of reports that have the potential to substantiate the epistemic validity of the isolated report are those in which the *ma‘ṣūm* permit a *mukallaf* to directly refer to their companions in order to seek knowledge of Sharī‘a precepts. For instance, there are numerous reports from the sixth Shiite impeccable Imam – Ja‘far al-Ṣādiq (d.148/765) – that clearly indicate that it is acceptable to obtain knowledge of Sharī‘a precepts from his companion named Zurāra, as he categorically states that Zurāra is trustworthy. Another example is the following report:

“‘Abd al-‘Azīz b. Maḥdī said: Perhaps due to need I cannot meet you [Imam] every time. Is Yūnus b. ‘Abd al-Raḥman trustworthy (*thiqa*), from whom I can take knowledge of my religion? He [the Imam] said: Yes²⁴⁹.”

Based on such reports, Muṣaffar quotes that Shaykh Anṣārī argues that the

²⁴⁹ Muṣaffar, *Uṣūl al-fiqh* vol. 2, p. 73

second group of *mutawātir ma'nawī* highlights that the *ma'sūm* necessarily assumed the epistemic validity of the isolated report. Accordingly, Anṣārī asserts that this is precisely why they explicated that the isolated report is accepted, if and when moral probity, or trustworthiness, of a particular narrator is established.

It can again be argued that the subject matter of the second group of *mutawātir ma'nawī* does not relate to the epistemic validity of following and acting in accordance with the isolated report per se, but rather with certain individuals. Evidently, the aforementioned report of the *ma'sūm* clearly indicates that the knowledge sought from Yūnus b. 'Abd al-Raḥman is epistemologically valid. However, this does not necessarily indicate that all isolated reports of individuals whose moral probity is established are epistemologically valid.

4.4.3 Third Group

The third group of *mutawātir ma'nawī* reports that have the potential to substantiate the epistemic validity of the isolated report are those reports that indicate on the necessity of relying on the reported *sunna* of the *ma'sūm* and their narrators. An example of such a report is the following:

“The one upon who is peace [i.e. the Imam] has said: When new situations arise then refer to the narrators (*ruwā*) of our *ḥadīth*, for verily they are my *ḥujja* upon you, and I am the *ḥujja* of Allah upon

them²⁵⁰.”

However, it can be argued that the aforementioned report uses the term *ruwā* (narrators) as opposed to the term *rāwī* (narrator). Based on the usage of the plural form of the word, it is possible to alternatively suggest that the *ma‘šūm* is indicating that in cases of new situations arising, it is not appropriate to merely consult a single narration or an isolated report, but rather a *mukallaf* or a *mujtahid* should consult multiple narrations.

Therefore, instead of deducing that the third group of *mutawātir ma‘nawī* substantiate the epistemic validity of the isolated report, it can be asserted that they actually substantiate the epistemic validity of a multiplicity of narrations that indicate the *sunna* of the *ma‘šūm* on a particular issue that can be extended and applied to new situations that arise.

4.4.4 Fourth Group

The forth group of *mutawātir ma‘nawī* that have the ability to substantiate the epistemic validity of the isolated report consist of those reports that urge the importance of memorising, writing and conveying the reports of the *ma‘šūm*. An example of this is the following report from the Prophet:

“Whoever from my community memorises (*ḥafaza*) forty hadith, Allah

²⁵⁰ *Ibid.*

will raise him on the day of judgment as a *faqīh* and a knowledgeable person (*‘ālim*)²⁵¹.”

Whilst Muẓaffar does not reveal his own opinion, it may be suggested that Shaykh Anṣārī included this group of reports in proving the epistemic validity of the isolated report because they emphasise the importance of preserving the *sunna* of the *ma‘ṣūm*. Accordingly, Shaykh Anṣārī draws a correlation between preservation and epistemic validity, inasmuch as he assumes that the reason why the *ma‘ṣūm* have emphasised the preservation of their reported *sunna* is because their reported *sunna* is epistemologically valid.

However, it is arguable that whilst encouraging people to preserve the reports that convey the *sunna* of the *ma‘ṣūm* implies that the *sunna* of the *ma‘ṣūm* is epistemologically valid, it does not necessarily imply that the *ẓannī* source of *khabar al-wāḥid* is also epistemologically valid.

4.4.5 Fifth Group

The final group of *mutawātir ma‘nawī* that can potentially substantiate the epistemic validity of the isolated report are those reports from the *ma‘ṣūm* that warn people against falling prey to reports that are fabricated. Muẓaffar points out that these reports signify that the epistemic validity of the isolated report was already pre-assumed by the *ma‘ṣūm*, as otherwise it would be irrelevant for the *ma‘ṣūm* to find it incumbent upon himself to warn people against

²⁵¹ *Ibid.*

following fabricated reports.

This group of reports provides stronger evidence in indicating the epistemic validity of the isolated report than the previous groups. This is because the isolated report by definition is a source that gives rise to mere *ẓann*, as there always exists some doubt regarding its authenticity and the possibility of it being fabricated. Accordingly, the *ma'ṣūm* is warning people to not fall prey to fabricated reports, with the obvious implication being to act in accordance with the isolated reports that are not fabricated, but instead are epistemologically valid. In essence, this group of *mutawātir ma'nawī* highlights that during the time of the *ma'ṣūm*, the Muslims accepted the epistemic validity of the isolated report, and it was common practice to follow and act in accordance with its indication. Furthermore, the *ma'ṣūm* endorsed this practice and just warned the Muslims to be careful of fabrication.

After discussing the aforementioned five groups, Muẓaffar concludes by quoting Anṣārī, who states that:

Other than this [i.e. the five groups of *mutawātir ma'nawī*], among the reports that can be gathered and made use of are those that show that the Imams were satisfied by [people] acting in accordance with *khavar* [*al-wāḥid*]. And although they [i.e. the isolated reports] do not give *qaṭ'*, in *Wasā'il* [*al-Shī'a*] it is claimed that there are reports that amount to *mutawātir* [that indicate] on acting in accordance with

khavar that is trustworthy (*thiqa*)²⁵².

Muḥaffar does not directly give his own opinion on whether or not he believes that the five groups of *mutawātir ma' nawī* can be used as evidence to substantiate the epistemic validity of the isolated report, however he does not propose any criticisms towards Anṣārī's claims. Therefore, it appears that Muḥaffar accepts Anṣārī's standpoint, despite the fact that his legal epistemology maintains that *ẓannī* evidence does not have the potential to prove the epistemic validity of another *ẓannī* evidence. Although the *mutawātir ma' nawī* are widely reported, they do not fall under the definition of the *mutawātir* that give rise to *qaṭ'*, as they are non-verbatim.

Even if one is to argue that *mutawātir ma' nawī* **do** give rise to certainty, it is clear that the subject matter of the aforementioned five groups concerns those isolated reports in which there is only one person in the chain of transmission between the *ma' šūm* and the narrator (N). In other words, the chain of transmission would read as follows:

Ma' šūm told A, who told N

However, the isolated report that is available to a *mujtahid* in the present day differs significantly to this, as the chain of transmission of the isolated report that currently exists contains many persons between the narrator and the *ma' šūm* e.g. it would read as follows:

²⁵² *Ibid*, p. 74

Ma‘šūm told A, who told B, who told C, who told D, who told E, who told F, who told N

It can be seen that the subject matter of the five groups of the *mutawātir ma‘nawī* does not correspond to the type of isolated reports that exist in the present day, as the chain of transmission is now significantly extended. Therefore, it is apparent that there is need for further argumentation to generalise the aforementioned five groups of *mutawātir ma‘nawī* if they are to be used to substantiate the epistemic validity of the isolated reports that we have at present.

4.5 Evidence from *ijmā‘* for the *Hujjiyya* of *Khabar al-wāḥid*

The third evidence evaluated by Muḥaffar to substantiate the epistemic validity of the isolated report is from *ijmā‘* (consensus). It is vital to know that *ijmā‘* was first introduced in the Sunni jurisprudential discourse as an independent source of Sharī‘a precepts. There has always been some level of disagreement amongst Sunni scholars about what type of *ijmā‘* is considered to be epistemologically valid, as some Sunni scholars maintain that *ijmā‘* is only epistemologically valid when it involves the consensus of all Muslims, whereas other Sunnis scholars argue that *ijmā‘* is epistemologically valid when it

involves the consensus of prominent Muslim scholars²⁵³. Following the four-fold categorisation of Sunni evidence, the Shiite Uṣūlī jurisprudential discourse also recognises *ijmāʿ* as one of its main sources of knowledge. However, contrastingly to the Sunnis, the Uṣūlīs maintain that *ijmāʿ* is only epistemologically valid when there is a consensus or agreement between a group of scholars, and among them is the *maʿṣūm*²⁵⁴.

The Uṣūlīs uphold the necessity of having the *maʿṣūm* as one of the participants of the *ijmāʿ* on the basis that it is possible for scholars, who are fallible human beings, to concur upon something that in actuality is contrary to the objective reality (*wāqīʿ*). Owing to their fallibility, even if a large number of scholars were to unanimously agree upon a particular issue, their consensus would not bring about *qaṭʿ*, rather at most it may provide *ẓann* – or more precisely, *ghalabat al-ẓann* - and therefore, due to the Shiite insistence regarding the primary axiom of the non-validity of *ẓann*, they maintain that *ijmāʿ* that is constructed solely from the opinion of fallible scholars is invalid. The Shiites propose that *ijmāʿ* arising from fallible human scholars is only epistemologically valid when the impeccable Prophet or Imam is also included within the large group of scholars. Owing to the impeccability of the Prophet or the Imams, it is not theologically possible for them to agree upon something that is erroneous and contrary to that which is in the objective reality. Accordingly, *ijmāʿ* that involves the opinion of the *maʿṣūm* brings about *qaṭʿ*

²⁵³ See Vogel, Frank E. *Islamic Law and Legal Systems: Studies of Saudi Arabia* (Leiden: Brill, 2000), p. 46; Faḍlī, *Durūs fī uṣūl fiqh* vol. 1, pp. 216-217

²⁵⁴ See *ibid*, pp. 217-218; Muḥaffar, *Uṣūl al-fiqh* vol. 2, pp. 91-99

knowledge, and hence is recognised as being epistemologically valid within the Shiite jurisprudential discourse. Shomali, in the *Principles of Jurisprudence* elucidates:

Therefore, according to Shi'i Islam, consensus is reduced to the Sunnah. Also, as supplementary evidence, some Shi'a scholars have argued that whenever there is a consensus amongst the Shi'a scholars in the time of occultation we can conclude that Imam Mahdi [who is the twelfth impeccable Imam] must have endorsed their view; otherwise he should have saved the community from holding a mistaken position by all. The Imam can intervene, perhaps by placing an idea into the mind of one or more of the scholars so that there will not be total agreement on an erroneous position... Therefore, for both Sunni and Shia, it is very difficult to have real consensus in practice, where there is no reference in the Qur'an and Sunnah²⁵⁵.

Nevertheless, when substantiating the epistemic validity of the isolated report by seeking proof from *ijmā'*, it is found that there is discrepancy within the Uṣūlī School. On one hand, Ṭūsī (d.460/1067) has been reported as the first Uṣūlī jurist to claim that there is an *ijmā'* on the epistemic validity of the isolated report, and he states that all scholars belonging to the Shiite School, including the *ma'ṣūm*, have unanimously agreed that although the isolated

²⁵⁵ Shomali, *Principles of Islamic Jurisprudence*, pp. 67-68

report is a *ẓannī* evidence, it is epistemologically valid. Thus, following and acting in accordance with its indication is obligatory upon every *mukallaf*, insofar as if they fail to do so and as a result overlook that which is in the *wāqī* *ī*, they may be held accountable and subject to chastisement.

Ṭūsī does not accept that the isolated report is unrestrictedly epistemologically valid, rather he maintains that the *ijmāʿ* qualifies that an isolated report can only be deemed as epistemologically valid when it has been transmitted by a chain of narrators who are all recognised as being adherents of the Shiite School, with the report being from one of the *maʿṣūm* as opposed to a companion of the *maʿṣūm*. Therefore, Ṭūsī does not advocate that the subject matter of *ijmāʿ* is *khābar al-wāḥid* qua *khābar al-wāḥid*; rather it is *khābar al-wāḥid* with the aforementioned qualifications. Muẓaffar points out that the following prominent Uṣūlī scholars also claimed that there was an *ijmāʿ* within the Shiite School regarding the epistemic validity of *khābar al-wāḥid*, namely: Sayyid Raḍī al-Dīn b. Ṭāwuṣ (d.664/1266), ʿAllāma Ḥillī (d.726/1325) in his *al-Nihāya*, Muḥammad Bāqir al-Majlisī (d. 1109/1698), and Shaykh al-Anṣārī (d.1281/1864) in his *al-Rasāʾil (Farāʾid al-uṣūl)*²⁵⁶.

In contrast, other Shiite scholars have claimed that there is an *ijmāʿ* between the Shiite scholars, including the *maʿṣūm*, which categorically denounces the epistemic validity of the isolated report. The most prominent scholar who

²⁵⁶ Muẓaffar, Uṣūl al-fiqh vol. 2, p. 27

advocated this view was the teacher of Ṭūsī, al-Sharīf al-Murtaḍā (d.436/1044), who maintains that in the Shiite tradition, the epistemic status of the isolated report is akin to the epistemic status of *qiyās*, thus concluding that it gives rise to mere *ẓann*, which is not epistemologically valid²⁵⁷. Muẓaffar notes that lending support to Murtaḍā, other notable scholars who have claimed this *ijmāʿ* were Ibn Idrīs (d.598/1202) in *al-Sarāʾir*, and Faḍal ibn Ḥasan al-Ṭabarasī (d.548/1153), the author of one of the most renowned Shiite works exegesis (*tafsīr*) of the Qurʾān entitled *Majmaʿ al-bayān li-ʿulūm al-Qurʾān*, who explicitly proclaimed that there was a consensus amongst Shiite scholars on the non-validity of the isolated report²⁵⁸.

It becomes apparent that there are two camps within the Uṣūlī School. The first camp claims that there is an *ijmāʿ* that substantiates the epistemic validity of the isolated report, whereas the second camp claims that there is an *ijmāʿ* that denounces the epistemic validity of the isolated report. Being the pioneers of the early Shiite jurisprudential discourse, both Ṭūsī and Murtaḍā are recognised as highly respected scholars within the Shiite tradition by not only the Uṣūlīs, but also the Akhbārīs, and as a result, their conflicting claims have led to creating severe confusion about the epistemic status of the isolated report.

²⁵⁷ See *ibid*, pp. 74-75; also for a detailed analysis of the historical development of Shiite *uṣūl al-fiqh* in the formative period (from the time of Muḥīd to Ṭūsī), see Calder, “Doubt and Prerogative,” pp. 61-62; Ḥaydarī, *al-Qaṭʿ*, pp. 12-18; Faḍlī, *Durūs fī uṣūl fiqh* vol. 1, pp. 69-76

²⁵⁸ Muẓaffar, *Uṣūl al-fiqh* vol. 2, p. 27

Owing to this, Muẓaffar moves on to examine how Anṣārī has offered various reconciliations between these two contrasting opinions²⁵⁹.

Firstly, Anṣārī elucidates that Ṭūsī's definition of *khavar al-wāḥid* differs to Murtaḍā's definition, as when Murtaḍā claims that there is an *ijmā'* on the non-validity of the isolated report, he is referring to those isolated reports that were narrated by people who adhered to the Sunni Schools, as opposed to originating from the Shiite tradition. Anṣārī argues that in light of this, both Murtaḍā and Ṭūsī are indicating upon the same thing; whilst Murtaḍā claims that there is an *ijmā'* that the isolated report 'that is reported by the Sunnis' is not epistemologically valid, Ṭūsī claims that there is an *ijmā'* that the isolated report 'that is reported by the Shiites' is epistemologically valid.

Similarly, the second possible reconciliation proposed by Anṣārī is that when Murtaḍā discusses *khavar al-wāḥid*, he is referring to those isolated reports that were not contained within the reliable Shiite canonical collections of *ḥadīth*, whereas when Ṭūsī discusses *khavar al-wāḥid*, he is referring to those isolated reports that **were**. This suggests that the Shiite scholars unanimously agreed on the epistemic validity of the isolated reports contained within the reliable Shiite canonical collections of *ḥadīth*, and denounced the epistemic validity of the isolated reports that were not.

²⁵⁹ See *ibid*, pp. 77-79; and Anṣārī, *Farāi'd al-uṣūl* vol. 1, pp. 145-166

The third possible reconciliation that Anṣārī offers is that when Ṭūsī claimed that there is an *ijmāʿ* on the epistemic validity of the isolated report, he does not refer to *khavar al-wāḥid* qua *khavar al-wāḥid*, which is *ẓannī*, but rather refers to *khavar al-wāḥid* that is associated with evidence (*maḥfūẓ bi-l qarāʿin*), which is *qaṭʿī*. This would reconcile the apparent differences between Murtaḍā and Ṭūsī, as Murtaḍā too agrees that it is possible for one to rely on and act in accordance with the isolated report that is associated with evidence, as it is substantiated.

Anṣārī suggests that in accordance with Ṭūsī's and Murtaḍā's actual works on legal theory, the most plausible or preferred reconciliation between their conflicting claims on *ijmāʿ* is the first possibility and then the second possibility. It is important to note that Anṣārī further suggests another more complicated reconciliation, but although he believes that it is the most comprehensive reconciliation between the claims of Ṭūsī and Murtaḍā, Muẓaffar rejects it as being inaccurate. It is also questionable whether Anṣārī actually formulated all of the aforementioned reconciliations, due to their varying differences in terms of complexity and detail. Instead, it is suggested that his Uṣūlī predecessors proposed these reconciliations in their respective works of legal theory, as they were also concerned with resolving the conflict between the two founding fathers of Shiite legal theory, and Anṣārī simply compiled these propositions together. This stance is supported by Muẓaffar, who provides a footnote in which he highlights that even the most preferred

reconciliation of Anṣārī was initially proposed by Muḥaqqiq al-Narāqī (d.1209/1795), who is famously known as the author of *al-Mināhaj*.

Nevertheless, apart from this, Muẓaffar does not directly comment on, or give preference to, any of the aforementioned possible reconciliations. Rather, he claims that:

Indeed, Murtaḍā has acted contrary to what he has originated here, and also has Ibn Idrīs who has followed him in his opinion, for verily most of the time they have taken [or have derived Sharīʿa precepts] from the trustworthy *akhbār al-āḥād* that are in the books of our people. In line with this, it is difficult to claim that all [the isolated reports they use] are widely reported, or are associated with evidence that prove their authenticity as certain (*qaṭʿ*)²⁶⁰.

This clearly highlights that although scholars such as Murtaḍā and Ibn Idrīs claim that there is an *ijmāʿ* on the non-validity of the isolated report, their practice in the discourse of jurisprudence (*fiqh*) suggests the opposite, as both of these scholars use a vast number of isolated reports in their juristic derivation of Sharīʿa precepts. Muẓaffar concludes that as both Murtaḍā and Ibn Idrīs belong to the Shiite tradition, they would not accept and rely on *ẓann* qua *ẓann*, and thus their reliance on the *ẓann* produced from the isolated report

²⁶⁰ Muẓaffar, *Uṣūl al-fiqh* vol. 2, p. 77

demonstrates that they deem such *ẓann* to be substantiated or associated with other evidence. Thus, in accordance with Muẓaffar, the subject matter of the *ijmāʿ* claimed by Murtaḍā and Ṭūsī is not the isolated report that is substantiated by *qaṭʿī* evidence, rather it is the isolated report that is not substantiated by *qaṭʿī* evidence.

Muẓaffar also asserts that most of the scholars belonging to the Shiite tradition who followed Ṭūsī accepted the epistemic validity of the isolated report, which in turn highlighted their acceptance of the validity of the *ijmāʿ* claimed by Ṭūsī. In support of this, Muẓaffar once again refers to Anṣārī, who in *Farāīʿd al-uṣūl* also mentions other claims of *ijmāʿ* that do not directly, but rather implicitly denote and substantiate the epistemic validity of the isolated report²⁶¹. The two consensuses that Anṣārī presents are both offered by renowned scholars of biographical studies of narrators (*ʿilm al-rijāl*), Muḥammad ibn ʿAmr al-Kishī (d. unknown) and Aḥmad ibn al-Kūfī al-Najāshī (d.450/1058). Kishī claims that there is an *ijmāʿ* amongst Shiite scholars whereby when particular scholars narrate a chain of transmission, there is no requirement to evaluate the moral probity of each narrator, as it is assumed that they are all trustworthy. Similarly, Najāshī also claims that there is an *ijmāʿ* amongst the Shiites whereby if a hurried report (*mursal ḥadīth*) – a report that has missing links of narrators in its chain of transmission – is reported by ibn Abī ʿUmayr, it is deemed as authentic. This is because the

²⁶¹ *Ibid*, pp. 77-78

moral probity of the narrators from a chain of transmission he reports does not need to be evaluated, as it is known that every report narrated by ibn Abī ‘Umayr has an authentic chain of transmission in which all narrators are considered as trustworthy, even if they are not explicitly mentioned in it.

It can be inferred from both these aforementioned claims of *ijmā’* that since Shiite scholars have agreed upon the epistemic validity of the isolated reports that have been reported by particular narrators, it necessarily implies that they must have, by priority, had a consensus on the fact that the indication of the isolated report is epistemologically valid in the first place. Consequently, in accordance with Anṣārī – and most likely Muḏaffar – the aforementioned claims of *ijmā’* imply that there was always an *ijmā’* within the Shiite tradition regarding the epistemic validity of the isolated report.

In his final analysis, Muḏaffar concludes by elucidating upon the closing remarks of Anṣārī, who pragmatically argues that if one is to maintain doubt that an *ijmā’* that substantiates the epistemic validity of the isolated report does not exist, then it would be very difficult for them to find an *ijmā’* in any other area of the jurisprudential discourse, apart from those that deal with the fundamental elements (*ḍarūriyyāt*) of religion²⁶². As such, Anṣārī argues that the epistemic validity of the isolated report is one of the very few jurisprudential issues that all Shiite scholars have unanimously agreed upon.

²⁶² *Ibid*, pp. 78-79

Nonetheless, he moves on to importantly qualify his final conclusion by emphasising that this *ijmā'* does not epistemologically validate **all** isolated reports, rather it only validates those reports that are transmitted by narrators whose moral probity is established, and as a result produce *īṭmi'nān* (contentment) as opposed to mere conjecture²⁶³.

It is arguable that Muḏaffar too agrees with Anṣārī's conclusion, as he simply does not indicate otherwise. Thus, there has always been an *ijmā'* between the Shiite scholars that the conjecture (*ẓann*) produced from the isolated report is epistemologically valid in the juristic derivation of Sharī'a precepts. However, it can be analyzed that Muḏaffar's uncertainty regarding whether or not **all** jurists have agreed on such a consensus is sufficiently apparent from this discourse, as he has abstained from establishing his own position throughout, instead choosing to be dependent on Anṣārī's standpoint.

A major issue that appears to be overlooked by Anṣārī and Muḏaffar is the fact that both Murtaḏā and Ṭūsī were not only recognised as jurists, but were also renowned as accomplished Shiite theologians. Accordingly, it can be disputed that their position is not just a legal epistemological one, but it is also a theological polemical standpoint. As pointed out in Chapter One, the legal theory proposed by Murtaḏā was developed alongside a polemic encounter

²⁶³ Muḏaffar explains that the term *īṭmi'nān* is used in the context of *sukūn al-naḡs*, whereby it brings peace (*sukūn*) to the self (*naḡs*). However, something that brings contentment does not necessarily mean that it in actuality corresponds to the objective reality (*wāḡi'ī*), rather it is something that can in fact lead to compound ignorance (*jahl al-murakab*), and thus it is different to *qaṭ'ī'ilm*, which as shown in Chapter Three leads to *yaqīn*.

with the mainstream Sunni Schools, which resulted in him denouncing the epistemic validity of a wide range of evidence used by Sunnis jurists, including the isolated report, on the basis that they did not give knowledge (*‘ilm*) of Sharī‘a precepts and produced mere *ẓann*. In contrast, in order to reduce the varying opinions (*ikhtilāf*) that were prevalent within circles of the Shiite jurisprudential discourse, Ṭūsī acted against what Calder describes as the established slogan of Shiite legal theory of the “non-validity of *khavar al-wāḥid*,” and upheld that the *ẓann* produced from the isolated report is valid as long as it has been reported by a chain of trustworthy reporters²⁶⁴.

This gives way to two suggestions. Firstly, it can be argued that the true position amongst the Shiites was that the isolated report is epistemologically valid, however due to severe confrontation between the Shiites and the Sunnis, the likes of Murtaḍā – or his teacher Mufīd – rejected the epistemic validity of the isolated report. Alternatively, it can be debated that the true position of the Shiites was that the isolated report is **not** epistemologically valid, however in order to establish juristic authority and achieve a dominant opinion amongst the varying opinions, scholars such as Ṭūsī had no choice but to accept the epistemic validity of the isolated report and maintain uniformity of Sharī‘a precepts across the Shiite tradition.

²⁶⁴ See Calder, “Doubt and Prerogative” p. 60

In essence, whether it is argued that the definition of the isolated report differs in the *ijmā'* that is claimed by Ṭūsī to the *ijmā'* that is claimed by Murtaḍā, or whether it is proposed that an *ijmā'* against the epistemic validity of the isolated report was constructed by the Shiites to achieve supremacy over the Sunni Schools, or indeed to maintain dominance over the Shiite tradition, the fact remains that there are two conflicting claims of *ijmā'*. Due to this ambiguity regarding what the real indication of the *ijmā'* is, in line with the standards set by the Uṣūlī School itself, it can suitably be argued that the *ijmā'* claimed by Ṭūsī and some of his contemporaries does not sufficiently act as a *qaṭ'ī* evidence that can potentially substantiate the epistemic validity of the isolated report.

4.6 Evidence from *Banā al-‘uqalā* for the *Hujjiyya* of *Khabar al-wāḥid*

The final evidence that Muḥaffar evaluates to substantiate the epistemic validity of the isolated report is *banā al-‘uqalā* (literally: the convention of rational people). As discussed, the knowledge that is derived from the convention of rational people is deemed as being epistemologically valid within the mainstream Uṣūlī tradition because the Divine Lawgiver is regarded as the Chief of all rational people (*ra'is al-‘uqalā*). It is important to note that this understanding is based on the Shiite affiliation with the *‘Adliyya* thought, which acknowledges that reason has the potential to know or intellectualise the intrinsic moral properties of Sharī‘a precepts, because every Sharī‘a precept ordained by the Just Divine Lawgiver is postulated with an intrinsic moral

property of either “praiseworthiness” or “blameworthiness”. Since it is believed that the Divine Lawgiver only orders acts whose intrinsic moral properties can be intellectualised, He is theologically held as the Head of all rational beings, and therefore, when all rational people follow a particular convention, the Divine Lawgiver by priority also follows that particular convention.

However, the mainstream Uṣūlīs point out that prior to taking *banā al-‘uqalā* as an epistemologically valid source or evidence of knowledge of Sharī‘a precepts, it is a necessary prerequisite for a *mujtahid* to actively search for any possible counter evidence that suggests otherwise. If counter evidence is found, which highlights that the Divine Lawgiver has rejected or prevented a particular convention of rational people, then it cannot be deemed as epistemologically valid, for the Chief of all rational beings Himself does not conform with it. In light of this, Muḏaffar claims that:

In itself the non-existence of prevention (*‘adam thubūt al-rad’*) is sufficient in revealing that He is consenting (*mūwāfiqa*) with them [i.e. the rational people], for indeed that is what He means and intends. If He was not happy with it [i.e. the convention] – which He sees and hears – then He would prevent them [i.e. the rational people] from it, and He would express to them this prevention by any manner of expression (*tablīgh*). Therefore, by the mere non-existence of prevention from Him, we know of His consent. Necessarily, if the real prevention (*al-*

radʿ al-wāqīʿ) does not arrive, then the prevention cannot be intellectualised, and thus it is epistemologically valid (*hujja*)²⁶⁵.

Thus, Muḏaffar advocates that it is natural for rational people to always follow and act in accordance with their particular conventions, as they cannot, or do not, have the ability to intellectualise or pick any faults with these conventions. Muḏaffar clarifies that the only way in which rational people would not act in line with their particular conventions is if the Divine Lawgiver – being the Chief of all rational beings – explicitly expresses the faults and inaccuracies of such particular conventions. Therefore, it follows that if a particular rational convention is to reveal something that in actuality is contrary to that which is in the objective reality (*wāqīʿ*), it would still be considered as epistemologically valid.

One such convention amongst rational people is their habitual acceptance of following isolated reports. Through the process of induction (*istiqrāʿ*), it is known that rational people in their daily lives rely on news that is conveyed to them by sources that they deem as reliable. Undoubtedly, although such news cannot provide them with certainty (*qaṭʿ*), as there is always the possibility of it being erroneous, rational people still accept it and ignore this possibility. For example, if best friend A informs best friend B that he has seen their best friend C die on the street, then B would accept and rely on the news brought by

²⁶⁵ See Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 152

A. Indeed, it is possible that C is not really dead and the news brought by A is inaccurate e.g. although A thought that C was dead, in reality C may have just fainted, or it is possible that C may have just been playing a practical joke on A. However, irrespective of such possibilities, B would still accept and rely on the news conveyed by A.

Owing to the fact that all rational people act in accordance with this convention, and considering that the Divine Lawgiver has not explicitly prevented rational people from doing so, for most post-Anṣārī Uṣūlīs, including Muḏaffar, this particular rational convention is a *qaṭʿī* evidence that proves and substantiates the epistemic validity of the isolated report²⁶⁶. Muḏaffar illustrates this view in a syllogistic manner, whereby he proclaims that both the minor premise and the major premise of the syllogism are *qaṭʿī*, and thus necessarily lead to a *qaṭʿī* conclusion²⁶⁷:

Minor Premise: All rational people conventionally follow and act in accordance with isolated reports.

Major Premise: The Divine Lawgiver, being the Head of all rational people, always consents to the conventions of rational people, unless He

²⁶⁶ See Khurāsānī, *Kifāyat al-uṣūl* vol. 2, pp. 83-85; Faḏlī, *Durūs fī uṣūl fiqh* vol. 1, pp. 298-299;

²⁶⁷ See Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 80

explicitly prevents them from acting in accordance with particular conventions.

Conclusion: Therefore, the Divine Lawgiver consents to the convention of acting in accordance with isolated reports, for he has not prevented rational people in doing so.

Here, the minor premise is based on inductive reasoning (*istiqrā'*), whereby its general proposition is derived and constructed from the examination and evaluation of specific instances. Therefore, the proposition that “all rational people conventionally follow and act in accordance with isolated reports” is only derived and constructed on the basis of examining and evaluating numerous instances of the practice of rational people.

At this juncture, it is important to consider that in his *al-Manṭiq*, Muḏaffar distinguishes between two types of inductions, namely *istiqrā' tām* (complete induction) and *istiqrā' nāqiṣ* (incomplete induction)²⁶⁸. The former refers to the process of induction where a general proposition is derived after examining and evaluating every possible instance. For example:

1. 100% of humans are mortal

²⁶⁸ See Muḏaffar, *al-Manṭiq*, pp. 264-265

2. Zayd is a human
3. Therefore, it is 100% certain that Zayd is mortal

Meanwhile, the latter refers to the process of induction where a general proposition is derived after examining and evaluating numerous possible instances, as opposed to every possible instance. For example:

1. 90% of humans are right-handed
2. Zayd is a human
3. Therefore, there is a 90% probability of Zayd being right-handed

Muḏaffar advocates that the proposition that is derived from a complete induction gives rise to *qaṭ'ī* knowledge as it covers every instance. Meanwhile, the proposition that is derived from an incomplete induction merely provides *ẓannī* knowledge, as it only covers some of the instances. In light of this, although Muḏaffar claims that the proposition: “All rational people conventionally follow and act in accordance with isolated reports” is based on *istiqrā'*, he does not clarify whether it is *istiqrā' tām* or *istiqrā' nāqīṣ*. Indeed, Muḏaffar could not claim that this proposition is derived from *istiqrā' nāqīṣ*, for if this was the case then it could not be deemed as *qaṭ'ī*, and as a result, the conclusion derived from it could also not be considered as *qaṭ'ī*, which would necessarily imply that *banā al-'uqalā* is **not** *qaṭ'ī* evidence that can be used to substantiate the epistemic validity of isolated reports. Thus, in order to support his claim that this proposition is *qaṭ'ī* that leads to a *qaṭ'ī* conclusion, Muḏaffar

is required to verify that it is derived from *istiqrāʿ tām*. However, as mentioned above, Muẓaffar does not provide any proofs or argumentation to prove this.

Nevertheless, Muẓaffar points out that in accordance with his teacher Naʾīnī, in comparison to the evidence provided from the Qurʾān, *sunna*, and *ijmāʿ*, *banā al-ʿuqalā* is the most strongest evidence that substantiates the epistemic validity of the isolated report²⁶⁹. This is because even if one is to deny that there is no evidence from the Qurʾān, *sunna*, or *ijmāʿ* that signifies or substantiates the epistemic validity of the isolated report, one cannot deny that there still exists a convention amongst rational people whereby they accept reliable isolated reports.

However, although rational people rely on the *ẓann* produced from isolated reports in their day-to-day life, it is arguable that in the realm of Sharīʿa, it is prohibited to rely and infer Sharīʿa precepts from the isolated report due to the general verses of the Qurʾān that prohibit following and acting in accordance with *ẓann*. In response to this point, Muẓaffar elucidates upon two arguments put forward by post-Anṣārī Uṣūlī predecessors:

1. Firstly, Muẓaffar's teacher Muḥammad Ḥusayn al-Gharawī al-Iṣfahānī (d.1365/1945) claims that the content of the verses that establish the primary axiom is *irshādī* (instructive), as opposed to *mawlawī*

²⁶⁹ See Muẓaffar, *Uṣūl al-fiqh* vol. 2, p. 81

(religious/devotional). Iṣfahānī argues that the primary axiom of the non-validity of *ẓann* is primarily inferred from the judgment of reason (*ḥukm al-‘aql*), and in light of this, he points out that it is impossible that the content of the verses of the Qur’ān are incompatible with another judgment of reason that dictates that the isolated report is an epistemologically valid source of knowledge.

In other words, it is impossible to suggest that reason has two conflicting rational judgments, where on one hand, it judges the non-validity of *ẓann*, resulting in rational people following the convention that prohibits acting in accordance with *ẓann*, and on the other hand, it judges the validity of *ẓann* produced from the isolated report, resulting in rational people following the convention that permits the acceptance of the *ẓann* produced from isolated reports. Consequently, Iṣfahānī suggests that the rational primary axiom of the non-validity of *ẓann* does not include the *ẓann* produced from the isolated report²⁷⁰. Nevertheless, although neither Muẓaffar nor Iṣfahānī explain why and how the *ẓann* produced from the isolated report differs to the *ẓann* mentioned in the primary axiom, it can seemingly be argued that they imply that rational people choose to rely on *ẓann* produced from the isolated report because they deem it to be more reliable than any other forms of *ẓann*.

²⁷⁰ *Ibid.*

2. The second argument is provided by Na'īnī (d.1355/1936), who claims that the verses of the Qur'ān that establish the primary axiom of the non-validity of *ẓann* indicate upon those instances where there is a lack of access to '*ilm/qaṭ*'. However, when rational people rely on the isolated report, they do so in the context of it producing '*ilm/qaṭ*' as opposed to *ẓann*, because they do not take into consideration the “very slim” possibility of it being erroneous. Therefore, in accordance with Na'īnī, the verses that establish the primary axiom have no relevance to the epistemic validity of the isolated report, as in accordance with rational people, the isolated report produces '*ilm/qaṭ*' as opposed to *ẓann*²⁷¹.

Muẓaffar abstains from giving his own opinion on either of the two aforementioned opinions, and it can be suggested that this is because they are somewhat contrary to his legal epistemology, and lead to a circular argument. Whilst both Iṣfahānī and Na'īnī conclude that the *banā al-ʿuqalā* of following *ẓann* produced from the isolated report is excluded from the general verses of the Qur'ān, they arrive at this conclusion by effectively admitting that there is a *banā al-ʿuqalā* that distinguishes the *ẓann* produced from the isolated report from other *ẓann*.

²⁷¹ *Ibid.*

Alternatively, Muḏaffar upholds that the apparent indication of the general verses of the Qur'ān clearly state that it is prohibited to act in accordance with *ẓann*. However, despite this general prohibition, he proposes that the convention of rational people, together with the practice of Muslim adherents (*sīrat al-mutashar'ia*) of following and acting in accordance with *ẓann* that is produced from the isolated report, is a specific instance (*khāṣ*) that is excluded from the general prohibition (*'ām*)²⁷².

In order to fully understand Muḏaffar's deliberation, it must be clarified that in the Uṣūlī discourse, a distinction is made between the general and the specific (*al-'ām wa-l khāṣ*) indication. The Uṣūlīs maintain that the apparent indication of a general (*'ām*) statement can always be specified or modified (*takhṣīṣ*) by the apparent indication of a specific (*khāṣ*) statement. For example, if it is supposed that the Divine Lawgiver hypothetically states: "respect all scholars" and elsewhere He says, "do not respect scholars who are transgressors" the latter indication, being specific, modifies the general indication, and as a result the Uṣūlīs arrive at the conclusion that in accordance with the Divine Lawgiver, "respect all scholars except the transgressors". The Uṣūlīs maintain that the apparent indication of the *khāṣ* has the ability to modify the *'ām*, because the former indication is deemed as being clearer and more accurate than the latter²⁷³. Accordingly, the general indication of the verses that indicate the non-validity of all *ẓann* is modified by the specific convention of rational

²⁷² *Ibid*, p. 82

²⁷³ For a detailed discussion on *al-'ām wa-l khāṣ* see Muḏaffar, *Uṣūl al-fiqh* vol. 1, pp. 130-145; Faḏlī, *Durūs fī uṣūl fiqh* vol. 2, pp. 306-399

people, and based on this, Muḏaffar proposes the convention of rational people as being a more stronger and accurate evidence that can modify the general indication of the Qur'ān.

Nonetheless, even if it is supposedly accepted that the Divine Lawgiver does not prevent the *banā al-ʿuqalā* of accepting and following information from reliable and trusted people, or *khavar al-wāḥid* qua *khavar al-wāḥid*, it can be argued that this convention cannot be analogised with accepting and following the isolated report from the *maʿṣūm*. This is because even the most authentic (*ṣaḥīḥ*) isolated report is effectively information from the *maʿṣūm* that has been verbally passed down over generations. Accordingly, although there only exists a slim possibility of error (which is tolerated) when someone who is known personally brings information, it is somewhat naïve to think that this possibility of error does not significantly increase when considering information that has been verbally passed down over generations. In light of this, it can be argued that the *banā al-ʿuqalā* that Muḏaffar describes does not equate to the isolated report that is from the *maʿṣūm*, and thus it cannot be used to substantiate the epistemic validity of the isolated report.

4.7 Conclusion

After highlighting the primary axiom of the non-validity of *ẓann*, and emphasising the epistemic validity of *qaṭʿ*, the Uṣūlī School is insistent that

evidence that produces *ẓann* can only be used in the juristic derivation of Sharīʿa precepts when it has been substantiated by another *qaṭʿī* evidence. This is because the substantiation of evidence that gives rise to especial conjecture (*ẓann al-khāṣ*) reveals that the Divine Lawgiver has permitted its utility in the juristic derivation. Accordingly, if a *mujtahid* was to use a particular substantiated *ẓannī* evidence and consequently derive a Sharīʿa precept that is contrary to the objective reality, then he would be granted with excusability and not be held accountable and subjected to chastisement. Conversely, if he was to not use a particular substantiated *ẓannī* evidence, and consequently act contrary to the objective reality, then he would not be granted with excusability, but rather be held accountable and subjected to chastisement.

One of the most – if not the most – widely used evidence from which Sharīʿa precepts are derived is the *ẓannī* source of *khavar al-wāḥid* that reveals the *sunna* of the *maʿṣūm*. Accordingly, substantiating its epistemic validity has always been of paramount importance to the Uṣūlīs, and hence scholars such as Muṣaffar have exerted a great effort to do so. As discussed, by using evidence provided by the Qurʾān, *sunna*, *ijmāʿ* and *banā al-ʿuqalā*, Muṣaffar concludes that each one of these sources independently produce *qaṭʿ* and fully disclose that the Divine Lawgiver permits the utility of *khavar al-wāḥid* as an independent source of knowledge of Sharīʿa precepts.

However, following the critical analysis carried out in this chapter, it has been established that each of the sources Muṣaffar analyzes to substantiate the

epistemic validity of the isolated report does not sufficiently produce *qaṭʿ*, whereby there is absolute and complete certainty that the Divine Lawgiver permits the utility of the *ẓannī* knowledge that is produced from the isolated report in the juristic derivation of Sharīʿa precepts. Therefore, in line with the standards set forth within the post-Anṣārī discourse of legal epistemology – i.e. of the non-validity of anything that is less than *qaṭʿ*, or anything that is not substantiated by *qaṭʿ* - it can be concluded that since the conjecture produced from the textual source of the isolated report fails to be substantiated by *qaṭʿ*, this necessarily implies that the majority of the Sharīʿa precepts that have been derived from it must also be re-evaluated **or** discarded.

Alternatively, it can be concluded that the standards proposed by contemporary legal epistemology are simply too demanding, inasmuch as although in theory it may be possible to have access to absolute certainty (or *qaṭʿ*), in practice it is impossible to have absolute *qaṭʿ* that has the ability to substantiate the epistemic validity of *ẓann*. Indeed, whilst this would imply that there is no need to re-evaluate or discard any of the Sharīʿa precepts that have been derived from the conjecture produced from the isolated report, it highlights that there is a significant need to re-evaluate the rigid underpinnings maintained in contemporary Uṣūlī legal epistemology.

The next chapter will move on to consider whether the post-Anṣārī insistence on the epistemic validity of *ẓann al-khāṣ* has been unanimously maintained in the Uṣūlī School, and highlight how certain pre-Anṣārī Uṣūlī scholars have in

fact argued for the epistemic validity of *ẓann al-muṭlaq* (conjecture qua conjecture). This stance supports the notion that the epistemological underpinnings or standards prescribed by post-Anṣārī legal epistemology are far too demanding, as there is a lack of access to *qaṭʿī* evidence that can be used to substantiate *ẓannī* evidence. The theories and proofs that pre-Anṣārī Uṣūlīs have offered in order to substantiate the epistemic validity of *ẓann al-muṭlaq* also potentially hold significant implications on the epistemic validity of evidence that can be used in the juristic derivation of Sharīʿa precepts, for if *ẓann* is proven to be epistemologically valid, then it naturally follows that every evidence that gives conjecture of Sharīʿa precepts should also be deemed as epistemologically valid.

CHAPTER FIVE

The Epistemic Validity of *Ẓann al-Muṭlaq*

It appears that prior to Anṣārī, the Uṣūlīs did not unanimously accept the epistemic validity of *ẓann al-khāṣ* alone, rather they also accepted the utilisation of *al-ẓann al-muṭlaq* (conjecture qua conjecture) in the juristic derivation of Sharī'a precepts. This stance is supported in the following passage from Ibn Shahīd al-Thānī's (d. 996/1558) *Ma'ālim al-dīn*, where he categorically expounds:

The sphere of definitive knowledge of those legal values that are not *ḍarūrī* [(essential)] in religion and in the Shī'ī sect is in our time cut off. For, that which is found in the indicators of juristic values (*adillat al-aḥkām*) produces on *ẓann* because of the lack of *mutawātir* proof, and the absence of any mention of ascertaining *ijmā'* other than the transmission of *khabar al-wāḥid*; and because it is evident that *aṣālat al-barā'a* [also] produces only *ẓann* and the book is *ẓannī al-dalāla*. If the cutting of knowledge (*'ilm*) be granted with regard to the legal values (*ḥukm al-shar'ī*) then God's commission (*taklīf*) must be based on opinion (*ẓann*)²⁷⁴.

²⁷⁴ See Calder, "Doubt Prerogative," pp. 72-73

Ibn Shahīd al-Thānī believed that access to knowledge of Sharī‘a precepts was restricted to those precepts that were already established and accepted in the Shiite tradition. As a result, a large number of Sharī‘a precepts were derived from *ẓannī* sources, and he explicitly conceded to the acceptance of *ẓann* in the juristic derivation of Sharī‘a precepts. As clarified in Chapter One, the growing influence of scholars such as ‘Allāma and Ibn Shahīd al-Thānī contributed to the epistemological shift regarding the acknowledgement of *ẓann* that occurred within the Shiite tradition. This shift led to a severe onslaught by the Akhbārīs, who labelled the discourse of legal epistemology proposed by ‘Allāma, Ibn Shahīd al-Thānī and their contemporaries as a Sunni innovation that acted against the Shiite jurisprudential heritage of the non-acceptance of *ẓann*. In essence, it is arguable that it was primarily due to the dominance displayed by the Akhbārī School that led these Uṣūlī scholars to concur on the primary axiom of the non-validity of *ẓann*, and accordingly interpret the famous works of legal theory of pre-Anṣārī Uṣūlīs based on this understanding of legal epistemology.

As elaborated in previous chapters, post-Anṣārī Uṣūlīs maintain that the only exception to the primary axiom of the non-validity of *ẓann* is *ẓann al-khāṣ* i.e. especial conjecture that is substantiated by *qaṭ‘ī* evidence. Based on this understanding, contemporary Uṣūlīs have been able to sufficiently counterattack the Akhbārī criticism of why they, and their Uṣūlī predecessors, accept *ẓann* – or more accurately *ẓann al-khāṣ* - in the juristic derivation of

Sharī'a precepts, by arguing that they are acting in accordance with their early Shiite jurisprudential heritage.

It is also debatable that the interpretation of the pre-Anṣārī acceptance of *ẓann* offered by post-Anṣārī scholars was influenced by an overriding agenda to legitimise their insistence of the epistemic validity of *ẓann al-khāṣ*. As such, it is equally possible that prior to Anṣārī's discourse of legal epistemology, his predecessors actually accepted the epistemic validity of *ẓann al-muṭlaq* or *ẓann qua ẓann*. This is supported by the fact that after detailing all the evidences that do not suffice in proving the epistemic validity of *khavar al-wāḥid*, Abū Qāsim al-Qummī (d. 1232/1817), whose *Qawānīn al-uṣūl* was prominently studied in the Shiite seminaries of Qum and Najaf²⁷⁵, categorically maintains that in the era of occultation, a *mujtahid* does not have any access to knowledge of Sharī'a precepts due to a lack *yaqīn* or amnesty (*tarkhīṣ*) being granted from the Divine Lawgiver that permits him to act in accordance with *ẓann*. This leads Qummī to highlight that access to knowledge of Sharī'a precepts is "closed" (*munsadd*) in the era of occultation, and as a result the *mujtahid* has no choice but to take recourse to *ẓann al-muṭlaq*. Through proclaiming the theory of "*insidād*" (closure), Qummī concludes that it is the main – if not the only²⁷⁶ - proof that sufficiently establishes the epistemic validity of *khavar al-*

²⁷⁵ See Litvak, "Madrasa and Learning in Nineteenth-Century Najaf and Karbalā'," p. 76

²⁷⁶ See Qummī, *Qawānīn* vol.2, p. 458

wāḥid and other *ẓannī* evidence, such as the apparent indication of the Qur'ān and *ijmā'*²⁷⁷.

The theory of *insidād* is without a doubt one of the most influential theories that has been proposed by the Uṣūlīs who have supposedly argued for the epistemic validity of *ẓann al-muṭlaq*. As a result of this, it is found that numerous post-Anṣārī *mujtahids* have criticised its validity, for indeed if its epistemic validity was to be established then this would necessarily lead to undermining the post-Anṣārī construction of legal epistemology.

Other than the theory of *insidād*, there are also three other theories that may potentially establish the epistemic validity of *ẓann al-muṭlaq*, which Anṣārī himself has presented in his *Farāī'd al-uṣūl*²⁷⁸. This chapter will thus critically analyse Anṣārī's evaluation of these theories, and then move on to appraise the four premises (*muqadimāt*) upon which the theory of *insidād* is based. A detailed examination of these theories will not only determine how Anṣārī and his contemporaries have argued against any theory that potentially establishes the epistemic validity of *ẓann al-muṭlaq*, but it will also assess the strength of these arguments. Undoubtedly, if it is found that such theories carry weight, then it is possible to claim that at least during some point in its historical development, the Shiite tradition accepted the epistemic validity of *ẓann al-*

²⁷⁷ *Ibid*, pp. 420-421

²⁷⁸ It is vital to note that Ṣanqūr, in *Mu'jam al-uṣūl* vol. 2, p. 368 points out that in total there are four theories that potentially substantiate the epistemic validity of *ẓann al-muṭlaq* and that there is no fifth.

muṭlaq, and as a result possibly permitted the utilisation of a wider range of evidence in the juristic derivation of Sharīʿa precepts.

5.1 The First Theory: the necessity of repelling *ẓannī* harm

The first theory that Anṣārī evaluates is that of the necessity of repelling harm that is emanated by *ẓann* (*dafʿ al-ḍarar al-maẓnūn*). It must be noted that Anṣārī does not attribute this theory to any specific Uṣūlī predecessor of his and as a result, it is unknown who authored it and during which era it originated. Nonetheless, since Anṣārī discusses this theory first, it is feasible to suggest that it was one of the first theories proposed in the Uṣūlī jurisprudential discourse in an attempt to substantiate the epistemic validity of *ẓann al-muṭlaq*.

In accordance with this theory, a *mujtahid* is required to follow and act in accordance with obligatory Sharīʿa precepts (*wujūb*) and prohibited Sharīʿa precepts (*ḥurma*) that he derives from evidence that gives rise to mere *ẓann*. This is because by abstaining from following or acting in accordance with *ẓannī* (conjectural) obligations and prohibitions, a *mukallaf* – or more precisely a *mujtahid* – may potentially be exposed to harm, and since the repulsion of harm is necessary, the *mujtahid* is required to follow his *ẓannī* knowledge of obligations and prohibitions.

In order to explain the uncover the nuances of this explanation and analyse whether it in fact substantiates the epistemic validity of *ẓann al-muṭlaq*, Anṣārī explains that the components of this theory can be divided into a minor premise and a major premise²⁷⁹. The former is concerned with the harm that is emanated by not following and acting in accordance with *ẓannī* Sharī'a precepts, whereas the latter is concerned with the principle of the necessity of repelling *ẓannī* harm.

Concerning the minor premise, Anṣārī claims that in line with the Shiite affiliation with 'Adliyya theology, every Sharī'a precept that is ordained by the Divine Lawgiver carries either the intrinsic property of praiseworthiness (*ḥusn*) or the intrinsic property of blameworthiness (*qubḥ*). Therefore, when the Divine Lawgiver ordains an obligatory act to a *mukallaf*, He only does so because the obligatory act itself carries the intrinsic property of being praiseworthy, which in accordance with Anṣārī results in benefiting (*maṣlaḥa*) the *mukallaf*. On the other hand, when the Divine Lawgiver ordains a prohibition to a *mukallaf*, He only does so because the prohibited act itself carries the intrinsic property of being blameworthy, and thus results in deterring (*mafsada*) the *mukallaf*. In light of this, when a *mujtahid* has *ẓann* that a particular Sharī'a precept is obligatory, he effectively has *ẓann* that it can lead to a benefit, and thus if he was to **not** follow and act in accordance with it, then this may lead him to harm, as there is a possibility of him overlooking a

²⁷⁹ See Anṣārī, *Farāi'd al-uṣūl* vol. 1, pp. 175-180

benefit. On the other hand, when a *mujtahid* has *ẓann* that a particular Sharī‘a precept is prohibited, he effectively has *ẓann* that it can lead to his detriment, and thus if he is to not follow and act in accordance with the prohibition then this can lead him to harm.

Furthermore, apart from the potential harm that arises from not following and acting in accordance with *ẓann* in the realm of this world, there also exists the possibility of being exposed to harm in the hereafter. Therefore, if a *mujtahid* was to discard a *ẓannī* obligation or a *ẓannī* prohibition, there is a possibility of him being held accountable by the Divine Lawgiver, and thus subject to chastisement (*‘iqāb*) in the hereafter. In essence, by not following and acting in accordance with *ẓann*, a *mujtahid* may potentially incur harm both in this world (*ḍarar al-dunyawī*) and in the hereafter (*ḍarar al-ukhrawī*).

The major premise of this theory is concerned with the principle of the necessity of repelling *ẓannī* harm. However, Anṣārī notes that this theory has been criticised by al-Ḥājbī in *Sharḥ Mukhtaṣar al-uṣūl*²⁸⁰ and his followers, on the basis that since its major premise is false, the theory is unable to substantiate the epistemic validity of *ẓann al-muṭlaq* at all.

In accordance with Ḥājbī, since all obligatory and prohibited Sharī‘a precepts have the intrinsic properties of being either praiseworthy or blameworthy,

²⁸⁰ The reference that Ḥājbī is the author of *Sharḥ Mukhtaṣar al-uṣūl* is given by Mīrzā Mūsā Tabrīzī in *Awṭḥāq al-wasā’il*, which is a commentary on *Farāī’d al-uṣūl*. See Tabrīzī, Mīrzā Mūsā b. Ja‘far. *Awṭḥāq al-wasā’il fī sharḥ al-Rasā’il* 2 vols. (Qum: Samā’ Qalam, 1969)

when a *mujtahid* or *mukallaf* only has *ẓannī* knowledge of obligations and prohibitions, then there is only a **possibility** that his *ẓannī* knowledge can lead him to harm. As a result, Ḥājbī concludes that since there is only a possibility of harm, reason is unable to unescapably dictate the principle of the necessity of repelling *ẓannī* harm; rather, he suggests that at most it can dictate that it is ‘good’ or ‘recommended’ to remain cautious²⁸¹. Thus, according to Ḥājbī, when a *mujtahid* has *ẓann* of a particular Sharī‘a precept, reason dictates that it is recommended for him to repel the *ẓannī* harm that is emanated from it, and in extreme circumstances it would dictate that he is required to be cautious and consequently act in accordance with his *ẓann*. However, it does not dictate that it is **necessary** for the *mujtahid* to repel the *ẓannī* harm, and hence it is not necessary for him to follow and act in accordance with his *ẓann*.

However, Khurāsānī (d. 1329/1911) in his *Kifāyat al-uṣūl* revokes Ḥājbī’s understanding, and points out that:

As for the major premise (*kubrā*), reason (‘*aql*’) independently judges [the [necessity of] repelling conjectural harm (*daf‘ al-ḍarar al-maẓnūn*), and it [i.e. the judgment of reason] is not informed by the rational intelligibility of praiseworthiness and blameworthiness (*al-taḥsīn wa-l taqbiḥ ‘aqlī*)²⁸².

²⁸¹ See Anṣārī, *Farāi‘d al-uṣūl* vol. 1, p. 175

²⁸² See Khurāsānī, *Kifāyat al-uṣūl* vol. 2, pp. 88-89

By expounding that the principle of the repulsion of harm is unrelated to the rational intelligibility of praiseworthiness and blameworthiness, Khurāsānī suggests that irrespective of whether a *mukallaf* has *qaṭʿī* knowledge or *ẓannī* knowledge of the intrinsic properties of Sharīʿa precepts, it is necessary for him to repel any possibility of harm. He explains that this is because the outcome of the principle of the necessity of repelling *ẓannī* harm cannot be rationally intellectualised, rather it is a natural or intuitive (*fiṭrī*) act²⁸³. Accordingly, when the possibility of harm is emanated by *ẓann* – or even *qaṭʿī* – reason will always naturally and intuitively respond to it by repelling it. For example, if it is supposed that a *mukallaf*, or for that matter any rational person, has *ẓann* that a thief will enter his house, then in accordance with Khurāsānī, the *mukallaf*’s reason will naturally and intuitively dictate to him that it is necessary that he repels the harm that can be caused by the thief, and thus he would necessarily act in a cautious manner and ensure he locks his house carefully.

However, it is possible to critique Khurāsānī’s opinion by arguing that reason does not **always** naturally and intuitively necessitate that a person has to repel harm in a cautious manner, rather the repulsion of harm is contingent upon the level of knowledge that one has of the occurrence of harm and the severity of its outcome. For example, if a *mukallaf* has certainty or even just conjecture that there is a poisonous snake in his house, then it can be suggested that his reason would naturally judge that he is required to exert maximum effort to

²⁸³ *ibid.*, p. 90

repel any harm caused by the snake, as it could possibly lead to the severe outcome of endangering one's life. On the other hand, if a *mukallaḡ* has conjecture or even certainty that there is a mouse in his house, then although there is a possibility of it causing an inconvenience, since the outcome is not as severe, it can be suggested that his reason would not naturally judge that he is required to exert maximum effort to repel any harm caused by it.

It can thus be argued that it is somewhat farfetched for Khurāsānī to claim that the rational mind naturally and intuitively always judges that it is necessary to repel any harm that is emanated by *ẓann*. Nonetheless, Khurāsānī remains in support of Anṣārī's claim, who also similarly criticises the view promoted by Ḥājibī²⁸⁴. Apart from this rational criticism, Anṣārī also offers a textual argument, whereby he presents proofs from the textual sources that too signify that the repulsion of *ẓannī* harm is necessary/obligatory (*wājib*). For example, Anṣārī points out that the verse of *naba'* clearly clarifies that God – or the Divine Lawgiver – does not want anyone to expose themselves to harm or detriment of any kind, and thus He warns by saying:

“If a miscreant (*fāsiq*) brings you a piece of news (*naba'*) then scrutinise (*fatabayyanū*) [it] so that you do not harm others through ignorance and then have to repent for what you have done²⁸⁵.”

²⁸⁴ See Anṣārī, *Farāi'd al-uṣūl* vol. 1, pp. 176-178

²⁸⁵ Qur'ān 49:6

According to Anṣārī, this verse clearly establishes that even though news that is brought by a *fāsiq* creates mere *ẓann*, the Divine Lawgiver is ordaining a *mukallaf* to take caution by following and acting in accordance with it. In addition to this verse, Anṣārī points out other verses that indicate upon the Divine Lawgiver's emphasis on the repulsion of any harm, whether *qaṭ'ī* or *ẓannī* in nature²⁸⁶. Therefore, Anṣārī extends his criticism against Ḥājibī and his followers by elucidating that the major premise of this theory is not only established through a rational (*'aqlī*) argument, but also through a textual/religious (*naqlī*) argument, and as a result Ḥājibī's critique of the major premise is inaccurate.

Nevertheless, the rebuttal presented by Anṣārī and Khurāsānī against Ḥājibī suggests that if the major and the minor premises are accepted, then this combined thought implies that *ẓann al-muṭlaq* is epistemologically valid. This conclusion in turn indicates that a *mujtahid* is required to follow and act in accordance with any potential evidence that give *ẓannī* knowledge of Sharī'a precepts in his juristic derivation. However, such an inference is undoubtedly problematic, as it goes against perhaps the core principle in post-Anṣārī legal epistemology of upholding the epistemic validity of *ẓann al-khāṣ* as opposed to *ẓann al-muṭlaq*.

²⁸⁶ See Anṣārī, *Farāī'd al-uṣūl* vol. 1, p. 176 for all such verses.

Accordingly, in order to affirm that this theory does not substantiate the epistemic validity of *ẓann al-muṭlaq*, Anṣārī criticises its minor premise on the basis that it is incomplete and inaccurate. In order to integrate his argument within the bounds of traditional Shiite heritage, Anṣārī points out that it is clear from *‘Uddat al-uṣūl* of Shaykh Ṭūsī (d. 460/1067) and *al-Ghunya* of Ibn Zuhra al-Ḥalabī (d. 585/1189-90) that when a *mukallaḥ* acts contrary to his *ẓann*, there is a possibility of him incurring harm upon himself. However, the harm that the *mukallaḥ* incurs is restricted to the realm of this world (*dunyawī*), and cannot be extended or analogised to the harm he may possibly incur in the hereafter (*ukhrawī*)²⁸⁷. Thus for instance, if a *mukallaḥ* has *ẓann* about a particular Sharī‘a precept being obligatory, then not acting in accordance with it can possibly lead him to harm, as he would essentially overlook the benefit it carries. However, although the *mukallaḥ* may possibly incur *dunyawī* harm, it is inaccurate to infer that he may also incur *ukhrawī* harm by being subjected to chastisement.

Anṣārī elaborates upon his reading of *‘Uddat al-uṣūl* and *al-Ghunya* by explaining that these texts suggest that a *mukallaḥ* does not incur *ukhrawī* harm because of the ‘Adliyya principle of *qubḥ al-‘iqāb bi-lā bayān* (the blameworthiness of chastisement without disclosure). As discussed in Chapter Two, the position held by Anṣārī and his mainstream contemporaries is that it is not befitting for a Just Divine Lawgiver to hold a *mukallaḥ* accountable for

²⁸⁷ *Ibid* p. 179

not acting in accordance with His ordinance, if He Himself does not disclose His ordinances through either *qaṭ'ī* (or full) explication or *ẓannī* (or conjectural) explication that is substantiated i.e. *ẓann al-khāṣ*. This is because the Divine Lawgiver is considered as the Chief of all rational beings (*ra'is al-'uqalā*), and therefore He too acts in accordance with how rational people act. Accordingly, since it is deemed as a blameworthy for a rational master to chastise another person without proper or full explication, it follows that it is also blameworthy for the Divine Master to chastise a *mukallaf* without proper or full explication. Anṣārī concludes that since a blameworthy act cannot be attributed to the Divine Lawgiver, it is inaccurate to claim that a *mukallaf* may attract *ukhrawī* harm by being subjected to chastisement if he was to discard following or acting in accordance with *ẓannī* Sharī'a precepts.

However, at this juncture it is important to note that as discussed in Chapter Two, Ṣadr rejects the mainstream Uṣūlī understanding of *qubḥ al-'iqāb bi-lā bayān*, by expounding the theory of *ḥaqq al-tā'a*. In accordance with this theory, the Divine Lawgiver has absolute Mastership and Proprietorship over everything, and thus He does not necessarily follow the convention of rational masters, rather theoretically it is logically possible for Him to hold a *mukallaf* accountable and subject him to chastisement without proper or full explication. Therefore, Ṣadr's proposal suggests that the minor premise is indeed accurate, as by not following a *ẓannī* Sharī'a precept, a *mukallaf* may be exposed to harm both in this world and in the hereafter. Therefore, although Ṣadr does not directly give an opinion on this theory, it can be argued that based on his

understanding, it is theoretically possible to conclude that if he agrees with the major premise, then logically he would also have to accept the epistemic validity of *ẓann al-muṭlaq*.

Nevertheless, Anṣārī and the mainstream post-Anṣārī *mujtahids* uphold that the minor premise is incomplete, as it is inaccurate to conceive that a *mukallaḥ* can incur *ukhrawī* harm. Thus, for instance, if it is hypothetically supposed that a *mukallaḥ* has *ẓann* that smoking cigarettes is prohibited, however he chooses to discard his *ẓann* and smoke a cigarette, then in such a case the *mukallaḥ* would incur harm in this world, insofar as smoking is detrimental to his health. However, it does not necessarily mean that he would also incur harm in the hereafter, as he cannot be chastised for something that the Divine Lawgiver has not properly disclosed. In light of this, Anṣārī concludes that although the major premise is accurate in indicating that it is necessary to repel *ẓannī* harm, the inaccuracy of the minor premise leads to the nullification of this theory as a valid proof that substantiates the epistemic validity of *ẓann al-muṭlaq*²⁸⁸.

However, it can be debated that Anṣārī's argument against this theory is somewhat polemical, for although it may be accepted that the minor premise is incomplete, it does not mean that a *mukallaḥ* does not incur harm at all. In other words, even if a *mukallaḥ* does not incur harm in the hereafter, he still does incur harm in this world by either overlooking a benefit (*maṣlaḥa*) by not

²⁸⁸ See Anṣārī, *Farāi'd al-uṣūl* vol. 1, pp. 179-180

following a *ẓannī* obligation, or incurring detriment (*mafsada*) by following a *ẓannī* prohibition. This emphasises the argument made in Chapter One, which suggests that the purpose of post-Anṣārī legal epistemology has been twofold, as not only does it provide instructions on how to attain knowledge of Sharīʿa precepts, but it is also profoundly concerned with explicating how to gain immunity against accountability. Nevertheless, it becomes apparent that if Anṣārī was to modify the minor premise to only indicate on the harm that can be incurred in this world by not following *ẓann*, then this theory would support the epistemic validity of *ẓann al-muṭlaq*. However, as discussed, such an outcome would evidently go against the claim that only *ẓann al-khāṣ* is epistemologically valid, and thus it can be argued that in order to keep his legal epistemology intact, Anṣārī was compelled to dismiss the minor premise on the basis that it is incomplete.

5.2 The Second Theory: the necessity of giving preference to *ẓann*

The second theory that is evaluated by Anṣārī, which aims to substantiate the epistemic validity of *ẓann al-muṭlaq*, is based on the rational principle of *tarjīḥ al-marjūḥ ‘alā ‘l-rājīḥ qabīḥ*. In accordance with this theory, it is blameworthy (*qabīḥ*) to give preference (*tarjīḥ*) to something that is least preferred (*marjūḥ*) over something that is more preferred (*rājīḥ*). Thus, in the context of legal epistemology, proponents of this theory – who Anṣārī again does not specify – proclaim that it is preferred to give preference to conjecture (*ẓann*) of Sharīʿa

precepts over giving preference to doubt (*shakk*) of Sharī'a precepts. In other words, it is preferred to follow and act in accordance with *ẓann* over *shakk*.

Anṣārī explains that proponents of this theory deem *ẓann* to rationally be more preferred over *shakk* on the basis that *shakk* is the opposite of *ẓann*²⁸⁹. In other words, if a person has *ẓann* of something, then he has *shakk* of its opposite. For example, if Zayd has to walk to the city of Baghdad and he has *ẓann* – or even *ghalabat* (preponderant) *al-ẓann* – that it is in the north direction, then at the same time he has *shakk* – or some level of doubt – that it may be in a non-north direction i.e. it could be in the south, east, west, south-west etc. In this instance, it would be blameworthy for Zayd to follow and act in accordance with his *shakk* and ignore his *ẓann*, as the likelihood or the probability of his *ẓann* being accurate and leading him to Baghdad is greater than the probability of his *shakk* leading him to Baghdad.

Proponents of this theory thus claim that since *ẓann* is the opposite of *shakk*, whenever a *mujtahid* is faced with *ẓannī* knowledge of Sharī'a precepts, he is required to follow and act in accordance with it, as it is blameworthy to ignore it and follow *shakk* instead. Thus, if it is hypothetically supposed that a *mujtahid* has *ẓann* that it is obligatory to establish the Friday congregational prayers (*ṣalāt al-jumu'a*) instead of establishing the afternoon prayers (*ṣalāt al-ẓuhr*), then he is required to follow and act in accordance with his *ẓann* and

²⁸⁹ *Ibid*, p. 181

choose the former option. Indeed, if he ignores his *ẓann*, and instead follows and acts in accordance with his *shakk* by establishing the afternoon prayers, then he may be held as blameworthy. As highlighted, according to the Shiite ‘Adliyya thought, if someone is deemed to be blameworthy, he can be held accountable and subject to chastisement. By using the following syllogistic framework, an understanding of how this theory substantiates the epistemic validity of *ẓann al-muṭlaq* can be achieved:

Minor premise: It is blameworthy for a *mujtahid* to give preference (*tarjīḥ*) to *ẓann* – which is *rājiḥ* - over *shakk* – which is *marjūḥ*.

Major premise: Anyone who commits a blameworthy act can be held accountable and be subjected to chastisement.

Therefore: A *mujtahid* is held accountable and can be subjected to chastisement for giving preference to *shakk*, and thus he must always follow and act in accordance with *ẓann*.

This theory evidently goes against Anṣārī’s legal epistemology, which promotes the epistemic validity of *ẓann al-khāṣ*. Anṣārī responds by arguing that the principle of ‘the blameworthiness of giving preference to the least

preferred over the most preferred' (*tarjīh al-marjūh 'alā 'l-rājih qabīh*) is not always necessarily true²⁹⁰. He explains that this is because there are certain instances when giving preference to the *marjūh* i.e. to *shakk*, is rationally praiseworthy as opposed to blameworthy, particularly in cases where *shakk* leads to *iḥtiyāt* (caution). As elucidated in Chapter One, the principle of caution (*aṣālat al-iḥtiyāt*) is applied when a *mukallaf* has doubt (*shakk*) of a Sharī'a precept because he only has ambiguous knowledge (*'ilm al-ijmālī*) of it, thus requiring the *mukallaf* to carry out and fulfil the maximum duties required. In light of this, if the *mukallaf* was to give preference to *shakk* – or *marjūh* - this would be more preferred than giving preference to *ẓann* – *rājih* - because the *marjūh* would dictate him to carry out the maximum duties required, ensuring that he performs all possible duties insofar as he would perform the duty he has *shakk* of **and** the duty he has *ẓann* of.

For example, if a *mukallaf* has *ẓann* that it is obligatory to establish the Friday congregational prayers, then he conversely has *shakk* that it may be obligatory to establish the afternoon prayers instead of the Friday prayers. In such a case, whilst the *mukallaf* knows without doubt – or with *yaqīn/qaṭ'* - that he has to establish prayers, his knowledge is ambiguous (*ijmālī*) regarding which prayer out of the two he is required to establish. In this instance, if the *mukallaf* was to follow and act in accordance with his *ẓann*, then he would choose to only pray the Friday prayers; on the other hand, if he was to follow and act in accordance

²⁹⁰ *Ibid.*

with *shakk*, then he would have to take recourse to the principle of *iḥtiyāt*, and hence it would be necessary for him to establish both the prayers. Therefore, in this instance, the act of remaining cautious, which is emanated by following and acting in accordance with the *marjūh* - or *shakk* - is praiseworthy, in comparison to following and acting in accordance with the *rājih* - or *ẓann* - for indeed by following the *marjūh*, a *mukallaf* is certain that he has performed the dictates of both the *rājih* and the *marjūh*.

In addition to this, Anṣārī also argues that in the context of the jurisprudential discourse, the principle of ‘the blameworthiness of giving preference to the least preferred (*shakk*) over the most preferred (*ẓann*)’ is not always conclusive, as there is no evidence that indicates that *ẓann* is most preferred (*rājih*) or even least preferred (*marjūh*). Rather on the contrary, there is counterevidence – both rational and textual - that in fact indicates that when a *mukallaf* does not have any knowledge – or *yaqīn/qaṭʿ* - of a Sharīʿa precept, then rather than acting in accordance with *ẓann*, he is required to apply the principle of exemption (*aṣālat al-barāʿa*)²⁹¹. As discussed in Chapter Two, in accordance with the mainstream opinion, it is rational that a *mukallaf* is exempt from the performance of any duty - or Sharīʿa precept - that the Divine Lawgiver has not explicated with full disclosure. Moreover, there are numerous traditions that also reflect this; for instance, the Prophet has stated

²⁹¹ *Ibid.*

that: “my *umma* (community) is alleviated from [responsibility] that it does not know”.

Anṣārī thus concludes that preference cannot be given to *ẓann* at any level; rather, a *mukallaḥ* is categorically excused from performing any responsibility that he does not have absolute knowledge of. Based on this understanding, this principle is unable to substantiate the epistemic validity of *ẓann al-muṭlaq*; on the contrary, it is in fact blameworthy for a *mukallaḥ* to give any preference to *ẓann*, as by doing so, he would be acting against the rational and textual evidence that enforce the principle of *barā’a* (exemption).

Nevertheless, although Khurāsānī shares Anṣārī sentiment above, it is found that in *al-kifāya* he claims that the only drawback posed by the second theory arises in cases where it is possible to prefer the *marjūḥ* or *shakk* over the *rājiḥ* and apply the principle of *iḥtiyāṭ*. He clarifies that if the principle of *iḥtiyāṭ* was to lead to hardship (*ḥaraj*), difficulty (*‘usr*), or social disorder (*ikhtilāl al-nizām*), then in such cases it cannot be concluded that it is praiseworthy to prefer the *marjūḥ* over the *rājiḥ*, rather it would be blameworthy to do so²⁹². In his final analysis, Khurāsānī, like Anṣārī, argues that this theory alone is insufficient in proving the epistemic validity of *ẓann al-muṭlaq*, and following the legal epistemology set by Anṣārī, he maintains that there is no evidence to suggest that *ẓann* is *rājiḥ* in the jurisprudential discourse. Consequently, both

²⁹² See Khurāsānī, *Kifāyat al-uṣūl* vol. 2, p. 91

Anṣārī and Khurāsānī conclude that this theory is only effective – as it will be shown - as one of the fundamental premises of the theory of *insidād*²⁹³.

5.3 The Third Theory: the necessity of following *ẓann* to ease hardship

The third theory that is evaluated by Anṣārī, which aims to substantiate the epistemic validity of *ẓann al-muṭlaq*, is in some respects similar to the aforementioned theory. Anṣārī attributes this theory to Sayyid ‘Alī Ṭabāṭabā‘ī²⁹⁴ who elucidates that there is no doubt that one has ambiguous knowledge (*‘ilm al-ijmālī*) due to there being a significant amount of of *ẓann* regarding obligatory and prohibited Sharī‘a precepts that a *mukallaf* is required to enact. Due to the existence of such ambiguous knowledge, a *mukallaf* is theoretically required to take recourse to the principle of *iḥtiyāt* and hence remain cautious by enacting everything that he either has *ẓann* or *shakk* of it being obligatory, and abstaining from anything that he either has *ẓann* or *shakk* of it being prohibited. However, this may result in the *mukallaf* experiencing *ḥaraj* (hardship), thus it is evident that the practical principle of *iḥtiyāt* conflicts with the principle of *naft al-ḥaraj* (nullification of hardship). With this in mind, it follows that one has no choice but to give preference to the

²⁹³ See *ibid*, and Anṣārī, *Farāi’d al-uṣūl* vol. 1, p. 181

²⁹⁴ It has been pointed out that Anṣārī obtained this theory from Sayyid Muḥammad al-Mujāhid (d.1242/1826) from his book entitled *al-Manāhil*. Al-Mujāhid was the son of Sayyid ‘Alī al-Ṭabāṭabā‘ī, who is the author of the book entitled *al-Riyāḍ*. See ‘Āmilī, Muḥammad Ḥusayn al-Ḥāj. *Irshād al-‘uqūl ila mabāḥith al-uṣūl*, 4 vols. (Qum: Mu’assasat Imām al-Ṣādiq, 2006), vol. 3, p. 299

most preferred i.e. *ẓann* (*rājih*) over the least preferred i.e. *shakk* (*marjūh*), as giving preference to the *marjūh* over the *rājih* is blameworthy.

Based on these premises, Ṭabāṭabā'ī concludes that this theory sufficiently establishes the epistemic validity of *ẓann al-muṭlaq*²⁹⁵. For example, if it is again hypothetically assumed that a *mukallaf* has ambiguous knowledge that he is required to pray, however he is unsure of what prayer to pray, as on one hand he has *ẓann* that the Friday congregational prayer is obligatory, and on the other hand he has *shakk* that the afternoon prayer may be obligatory in its place, then if he were to apply the principle of *iḥtiyāt*, he would have to enact both the dictates of his *ẓann* and his *shakk*. However, since the performance of both these acts may cause hardship for the *mukallaf*, the principle of *naḥī al-ḥaraj* becomes active and hence rather than following and acting in accordance with the principle of *iḥtiyāt*, the *mukallaf* is required to follow and act in accordance with the principle of *naḥī al-ḥaraj* and enact the obligation he has *ẓann* of, as this obligation is *rājih*.

It must be noted that the reason why the principle of *naḥī al-ḥaraj* supersedes the principle of *iḥtiyāt* is because the latter is a procedural principle (*aṣālat al-'amaliyya*), whereas the former is recognised as a *qā'ida fiqhiyya* (jurisprudential maxim). As discussed in Chapter One, whilst a procedural principle only leads to a *ḥukm al-zāhiri* (an apparent Sharī'a precept), since a

²⁹⁵ See Anṣārī, *Farāi'd al-uṣūl* vol. 1, p. 182

qā'ida fiqhiyya is a maxim that is established through textual and rational evidence, it leads to a *ḥukm al-wāqī'ī* (a real Sharī'a precept). Thus, in the juristic process of the derivation of Sharī'a precepts, a *mujtahid* is always required to first take recourse to evidence that leads him to *ḥukm al-wāqī'ī* and only when he cannot do so is he required to follow the principles that provide *ḥukm al-zāhirī*. Consequently, the *qā'ida fiqhiyya* of *naḥī al-ḥaraj* overpowers the *aṣālat al-'amaliyya* of *iḥtiyāt*.

Nonetheless, both Anṣārī and Khurāsānī uphold that this theory does not independently substantiate the epistemic validity of *ẓann al-muṭlaq*²⁹⁶. They maintain that there are certain fundamental premises that are discussed in the theory of *insidād*, and only when **all** of these fundamental premises are proven to be accurate is it possible to substantiate the epistemic validity of *ẓann al-muṭlaq*. Accordingly, they claim that this theory is incomplete, as it only contains some of the premises. In order to elaborate on this, Sayyid Muḥammad Ja'far al-Mūrawwīj in his commentary of *al-Kifāya*, states that out of all the fundamental premises that are discussed in the theory of *insidād*, this theory contains three²⁹⁷, which are:

1. There is ambiguous knowledge of obligatory and prohibited Sharī'a precepts.

²⁹⁶ See *ibid*, p. 183; Khurāsānī, *Kifāyat al-uṣūl* vol. 2, p. 92

²⁹⁷ See Mūrawwīj, Sayyid Muḥammad Ja'far al-Jazā'irī, *Muntaha al-dirāya fī tawḍīḥ al-Kifāya* 8 vols. (Qum: Maṭba'at al-Amīr, n.d.) vol. 4, p. 572-573

2. It is **not** possible to take recourse to the principle of *iḥtiyāt* to dissolve the ambiguous knowledge, as this would necessarily lead to hardship (*ḥaraj*).
3. Since it is impossible to act in accordance with *iḥtiyāt* i.e. by enacting the Sharī'a precepts that are known through *ẓann* and through *shakk*, one has to prefer acting in accordance with *ẓann*, as it is the most preferred (*rājih*) in comparison to *shakk*, which is least preferred (*marjūh*). If the contrary were to take place, then this would be blameworthy.

In light of this, it is evident that the difference between the second theory and this theory is that the former only contains one of the fundamental premises of the theory of *insidād*, which is that it is blameworthy to give preference to the *marjūh* over the *rājih*. Meanwhile, this theory contains three of the fundamental premises. Anṣārī and Khurāsānī deem both the second and third theories as incomplete, and propose that the only complete theory that can potentially substantiate the epistemic validity of *ẓann al-muṭlaq* is the theory of *insidād*.

5.4 The Fourth Theory: *dalīl al-insidād*

The more popularly discussed theory in Uṣūlī legal theory is the fourth and final theory or “evidence” (*dalīl*) of *insidād*. This theory is founded upon four fundamental premises (*muaqadimāt*), and it is principally accepted in the post-Anṣārī jurisprudential discourse that reason necessarily concludes upon the epistemic validity of *ẓann al-muṭlaq* only when all four of these premises are established or proven²⁹⁸. This effectively implies that any evidence that produces *ẓannī* knowledge of Sharī‘a precepts can be used in the juristic process of derivation, and thus at first instance it appears that as soon as the fundamental premises of the theory of *insidād* are established, a wider range of evidence becomes epistemologically valid in the Shiite jurisprudential discourse. Accordingly, a *mukallaḥ* would be required to follow and act in accordance with *ẓann al-muṭlaq* in order for him to derive Sharī‘a precepts and be granted with excusability, otherwise he would be held accountable.

Based on this, a specific evidence or source of law can only be considered as non-valid (*ghayr ḥujja*) when there is *qaṭ‘ī* evidence that establishes its non-validity. An example of a specific *ẓannī* evidence that is normally cited to be excluded from the general epistemic validity of *ẓann al-muṭlaq* is *qiyās*. As Muḥaffar points out, there is ample textual and non-textual evidence that establishes - with *qaṭ‘ī* - that the *ẓann* produced from *qiyās* is excluded from the

²⁹⁸ See Muḥaffar, *Uṣūl al-fiqh* vol. 2, p. 27

general epistemic validity of *ẓann al-muṭlaq*²⁹⁹. Accordingly, if it was hypothetically supposed that a jurist can utilise *ẓann al-muṭlaq* in his derivation of Sharī‘a precepts, he is first required to distinctly search for any *qaṭ‘ī* evidence that determines what *ẓann* is excluded, and only then can he use *ẓann al-muṭlaq*.

5.4.1 The First Premise

The first premise of the theory of *insidād* is undoubtedly the central premise upon which all other premises of this theory are contingent. In accordance with proponents of this theory, there is a “closure of the door of knowledge and substantiated knowledge” (“*insidād bāb al-‘ilm wa-l ‘ilmī*”) regarding Sharī‘a precepts in the current era.

By arguing that the door of knowledge is closed (*insidād bāb al-‘ilm*), it is claimed that there is no access to detailed knowledge that enables one to have absolute understanding or awareness of Sharī‘a precepts. This is because there is no direct access to the Prophet or the Imams – i.e. the *ma‘ṣūm* – from whom it is possible to attain knowledge of Sharī‘a precepts. Moreover, the number of clear injunctions that are emanated from the Qur’ān, *mutawātir* reports, or *qaṭ‘ī ijma‘* are few and do not sufficiently cover all of the issues for which a

²⁹⁹ *Ibid.*

mukallaḥ requires Sharīʿa precepts. Indeed, this component of the first premise is also accepted by post-Anṣārī Uṣūlīs, who too – for the same reasons – agree upon and accept the claim that the door or access to knowledge is closed in the present day³⁰⁰.

Secondly, by claiming that the door of substantiated knowledge is closed (*insidād bāb al-ʿilmī*), proponents of this theory imply that there is no access to evidence that gives rise to *ẓann* of Sharīʿa precepts that has been substantiated by the Divine Lawgiver. This component of the first premise is clearly incompatible with the post-Anṣārī discourse of legal epistemology, as post-Anṣārī Uṣūlīs have somewhat unanimously maintained that there exists especial conjecture (*ẓann al-khāṣ*), whose epistemic validity is postulated by the Divine Lawgiver Himself, and thus evidence that emanates *ẓann al-khāṣ* is held at the same epistemic pedestal as evidence that emanates *qaṭʿ*.

This signifies that the differing opinion amongst the Uṣūlīs regarding this premise is that some advocate that there is recourse to especial conjecture, and thus only *ẓann al-khāṣ* is epistemologically valid, whilst others claim that there is no recourse to *ẓann al-khāṣ* and thus argue for the epistemic validity of *ẓann al-muṭlaq*. It is for this reason that this premise has been deemed as the central premise upon which all other premises are contingent, to the effect that Anṣārī states:

³⁰⁰ See for instance Muḥaffar, *ibid*; Khurāsānī, *Kifāyat al-uṣūl* vol. 2, p. 93 Anṣārī, *Farāʾid al-uṣūl* vol. 1, p. 184

This is the most important premise of the theory of *insidād*, rather what is quite explicit from the words of some [of the Uṣūlī predecessors] is that the establishment of this premise is sufficient in establishing the epistemic validity of *ẓann al-muṭlaq* because there is a consensus on the presumption that if there truly is no recourse to *ẓann al-khāṣ* then *ẓann al-muṭlaq* is epistemologically valid³⁰¹.

If Anṣārī and his contemporaries did not admit to the existence of *ẓann al-khāṣ* then they would necessarily have had to conclude on the epistemic validity of *ẓann al-muṭlaq*. However, since these scholars **do** admit to the existence of *ẓann al-khāṣ*, they conclude that this premise is inaccurate from the outset, and as a result deny the theory of *insidād* based on this premise.

5.4.2 The Second Premise

If the first premise is accepted, inasmuch as if one is to admit to *insidād bāb al-‘ilm wa-l ‘ilmī*, then according to Muṣaffar, the second premise of the theory of *insidād* is enacted. In accordance with this premise, since there is no access to detailed knowledge of Sharī‘a precepts, a *mukallaḥ* – or a *mujtahid* – is left with ambiguous knowledge (*al-‘ilm al-ijmālī*) that is emanated from evidence

³⁰¹ *Ibid.*

that merely gives *ẓann* of obligatory and prohibited Sharīʿa precepts. Accordingly, this premise argues that it is indeed **not** possible for a *mukallaf* to dissolve such ambiguous knowledge by discarding it and not following and acting in accordance with any Sharīʿa precept that is emanated by *ẓannī* evidence³⁰².

Prior to discussing this premise further, it must be noted that this proposition has two parts. The first part explicates that there is ambiguous knowledge of obligatory and prohibited Sharīʿa precepts, whereas the second part is concerned with what a *mukallaf* is required to do in cases when he has ambiguous knowledge. Indeed, it is found that there is discrepancy in the post-Anṣārī Uṣūlī discourse regarding the exact number of the fundamental premises upon which the theory of *insidād* is based. For instance, Khurāsānī in *al-Kifāya*, states that there are actually five fundamental premises, as unlike Muẓaffar or Anṣārī, he does not deem it appropriate to amalgamate the two parts of this premise as one. Instead, Khurāsānī counts the first part as the first fundamental premise of the theory of *insidād*, and the second part as the third fundamental premise³⁰³.

In any case, three explanations are given to substantiate the second part of this premise, and establish why it is not possible for a *mukallaf* to dissolve his

³⁰² See Muẓaffar, *Uṣūl al-fiqh* vol. 2, p. 27

³⁰³ See Khurāsānī, *Kifāyat al-uṣūl* vol. 2, pp. 92-93. It is found that post-Anṣārī Uṣūlīs have either followed Anṣārī's categorisation of four premises or Khurāsānī's categorisation of five premises.

ambiguous knowledge by discarding it and not following and acting in accordance with any Sharīʿa precept that is emanated by *ẓannī* evidence:

1. The first explanation is that when a *mukallaf* has ambiguous knowledge of Sharīʿa precepts, he is required to take recourse to the procedural principle of *iḥtiyāt* and is unable to apply the procedural principle of *barāʿa*. This is because the *mukallaf* has certain knowledge – as opposed to initial doubt (*shakk al-badawī*) – that the Divine Lawgiver has issued certain Sharīʿa precepts, however he is unsure of what exactly these Sharīʿa precepts are, as he only has *ẓannī* knowledge and thus “ambiguous” knowledge (*ʿilm al-ijmālī*) of them³⁰⁴. For instance, in the hypothetical example of when a *mukallaf* has *ẓann* that the Friday congregational prayer is obligatory as opposed to the afternoon prayer, he has ambiguous knowledge that ‘a prayer’ is obligatory, and thus in such a case he cannot apply the procedural principle of *barāʿa* and conclude that he is exempted from prayers.

However, Shaykh Ibrāhīm Ismāʿīl al-Shaharkānī, in his commentary of Muḏaffar, argues that not all Uṣūlīs agree with the claim that a *mukallaf* has ambiguous knowledge in cases when he has no access to detailed knowledge of Sharīʿa precepts. He points out that in accordance with

³⁰⁴ For more clarification on the distinction between initial doubt (*shakk al-badawī*) and ambiguous knowledge (*ʿilm al-ijmālī*), and how the former necessitates recourse to the procedural principle of *barāʿa*, whereas the latter necessitates recourse to the procedural principle of *iḥtiyāt*, see Chapter One.

Qummī, in the context of *insidād bāb al-‘ilm wa-l ‘ilmī*, since a *mukallaf* only has access to *ẓannī* knowledge of Sharī‘a precepts, he can technically take recourse to the procedural principle of *barā’a*, and thus be excused from every responsibility by discarding it. Qummī explains that this is because it is not possible to attain any knowledge – even ambiguous knowledge – from evidence that gives mere *ẓann*. Rather, he maintains that knowledge of any kind can only sufficiently be emanated by evidence that gives *qaṭ’*. Consequently, evidence that gives rise to *ẓann* merely emanates initial doubt, and as a result the procedural principle of *barā’a* becomes active³⁰⁵.

For instance, if there are two cups, and a person has *ẓann* that one of the two cups contains alcohol, then in such a case it cannot be concluded that he has ambiguous knowledge, for he does not know with certainty that even one of the cups definitely contains alcohol. Thus, the person has initial doubt and can take recourse to the principle of *barā’a* and drink from either of the two cups, as opposed to taking recourse to the principle of *iḥtiyāt* and abstaining from drinking from either cup.

In summary, the mainstream Uṣūlīs maintain that in the situation of *insidād*, a *mukallaf* has ambiguous knowledge of Sharī‘a precepts, and thus cannot discard following and acting in accordance with them.

³⁰⁵ See Shaharkānī, *al-Mufīd fī sharḥ uṣūl al-fiqh*, p. 46; this is also pointed out by Anṣārī, see Anṣārī, *Farāī’d al-uṣūl* vol. 1, p. 190

However, Qummī argues that this claim is inaccurate as a *mukallaf* does not have ambiguous knowledge, but rather he has initial doubt and thus takes recourse to the principle of *barā'a* over the principle of *iḥtiyāt*. Nonetheless, it is important to note that although Qummī is technically accurate, he still maintains that a *mukallaf* is **not** justified from discarding any responsibility; the reason for this assertion is possibly due to the following two explanations.

2. The second explanation is given in Anṣārī's *Farāi'd al-uṣūl*. In accordance with Anṣārī, there is an *ijmā'* (consensus) amongst the Shiites that establishes that it is not possible for the *mukallaf* to discard, or be exempt from, following Sharī'a precepts merely because they are known through *ẓannī* evidence. He explains:

[There is a] certainty-bearing consensus (*al-ijmā' al-qaṭ'i*) that the point of reference is not [to take recourse] to exemption (*barā'a*) in the case when it is assumed that the door of knowledge is closed (*insidād bāb al-'ilm*) and [in the case when] it is not possible to specifically substantiate evidence for the epistemic validity (*ḥujjiyya*) of isolated reports (*akḥbār al-āḥād*)³⁰⁶.

³⁰⁶ Anṣārī, *Farāi'd al-uṣūl* vol. 1, p. 185

Anṣārī explains that this *qaṭʿī ijmāʿ* is derived from a detailed examination of the jurisprudential works of his Uṣūlī predecessors and contemporaries, who have indirectly argued that it is not permissible for a *mukallaḥ* to claim that he does not have any responsibility (*taḳlīf*) to follow and act in accordance with Sharīʿa precepts simply because they have not been explicated to him with proper disclosure. In fact, Anṣārī goes as far as clarifying that the majority of scholars (*ʿulamāʿ*) explicitly maintain that *ẓann* replaces *ʿilm* in cases where there is no access to knowledge of Sharīʿa precepts³⁰⁷.

Based on this understanding, it can be argued that the existence of such *ijmāʿ* is sufficient in suggesting that there was a consensus amongst Anṣārī’s predecessors that access to knowledge of Sharīʿa precepts was “closed”. Otherwise it does not make any sense to claim that a *mukallaḥ* is not permitted to discard knowledge of any Sharīʿa precepts that have not been fully disclosed, because if a *mukallaḥ* had access to Sharīʿa precepts through either certainty-bearing evidence or substantiated *ẓannī* evidence, then there is no reason for him to take recourse to any *ẓannī* evidence that has not been substantiated. Accordingly, this *ijmāʿ* provides a counterattack to the legal epistemology that is maintained by post-Anṣārī Uṣūlīs, whose discourse aims to maintain the non-validity of *ẓann* qua *ẓann*, and insists solely upon the epistemic validity of *ẓann*

³⁰⁷ *Ibid.*

al-khāṣ. Indeed, it is questionable that if *ẓann al-khāṣ* is the only epistemologically valid *ẓann* that can be used in the juristic derivation of Sharīʿa precepts, then why did Anṣārī’s predecessors take recourse to *ẓann qua ẓann* in their juristic derivation? It can possibly be suggested that this was due to the occurrence of a paradigm shift in legal epistemology during the pre-Anṣārī Uṣūlī and post-Anṣārī Uṣūlī period. The former claimed that there was no access to knowledge of Sharīʿa precepts as the “door of knowledge was closed,” and thus there was no choice but to take recourse to *ẓann al-muṭlaq* or *ẓann qua ẓann*. Meanwhile, the latter argue that there is access to knowledge of Sharīʿa precepts, because the Divine Lawgiver Himself has substantiated certain evidence that gives rise to *ẓann al-khāṣ*, and as such has postulated them to be on the same epistemic pedestal as *qaṭʿ/ʿilm*.

Moreover, it can also be argued from Anṣārī’s aforementioned quote that when the Uṣūlīs discuss the epistemic validity of *ẓann al-muṭlaq*, they are only concerned with the epistemic validity of isolated reports (*akhbār al-āḥād*) as opposed to the epistemic validity of evidence qua evidence that gives rise to *ẓann*. The reason for this is two-fold; firstly, the aforementioned quote specifically mentions “isolated reports”. Indeed, if the category of “*ẓann al-muṭlaq*” was to include a wider range of *ẓannī* evidence, then it makes no sense for Anṣārī to only mention a specific *ẓannī* evidence. Secondly, it is found that post-Anṣārī legal epistemology makes a distinction between *insidād al-kabīr*

and *insidād al-ṣaghīr*³⁰⁸. The former refers to instances where the theory of *insidād* is applied to substantiate the epistemic validity of *ẓann al-muṭlaq*, whereas the latter refers to instances where the theory of *insidād* is applied to specifically substantiate the epistemic validity of the isolated report. For example, after detailing evidence from the Qur’ān, *sunna* and *ijmā’* in *Qawānīn al-uṣūl*, Qummī proposes the theory of *insidād* as an evidence that he believes is the most comprehensive in substantiating the epistemic validity of the isolated report³⁰⁹. Therefore, the post-Anṣārī distinction between *insidād al-kabīr* and *insidād al-ṣaghīr* also suggests that pre-Anṣārī Uṣūlīs were predominantly concerned with only substantiating the epistemic validity of the isolated report through the theory of *insidād*, as opposed to substantiating the epistemic validity of other alternative evidence that also gives rise to *ẓann*.

This once again supports the argument that since most of the juristic derivation of Sharī’a precepts was obtained from the isolated report, the sole purpose of legal epistemology – if not legal theory as a whole –

³⁰⁸ See Ṣanqūr, *Mu’jam al-uṣūl* vol. 1, pp. 375-376; Muẓaffar, *Uṣūl al-fiqh* vol. 2, pp. 25-26

³⁰⁹ It must be noted that although Qummī uses the theory of *insidād* to specifically substantiate the epistemic validity of *ḵabar al-wāḥid*, he unlike other Uṣūlīs does categorically state that it also substantiates the epistemic validity of the apparent in indication of the Qur’ān and *ijmā’*. However, as shown in Chapter One, since Qummī restricts the subject matter of Uṣūlī epistemology to the four-fold characterisation of evidence, he from the outset establishes that knowledge of Sharī’a norms cannot be attained through a wider range of evidence, but rather can only be attained through the Qur’ān, *sunna*, *ijmā’* and ‘*aql*. Therefore, he categorically promotes the theory of *insidād* to only substantiate the *ẓann* that is produced from the four-fold characterisation of evidence. See Qummī, *Qawānīn* vol. 1, pp. 47-48 and *Qawānīn* vol. 2 pp. 420-458.

was to substantiate its epistemic validity³¹⁰. However, at this juncture, it can conversely be suggested that the Uṣūlīs used the theory of *insidād* for substantiating the epistemic validity of the isolated report because this was the only *ẓannī* source available that indicated knowledge of Sharīʿa precepts at that time. In contrast, every other *ẓannī* source that potentially indicated Sharīʿa precepts, such as *qiyās*, was superseded by *qaṭʿī* evidence that established its non-validity.

In essence, it is possible to assert that ambiguous knowledge of Sharīʿa precepts has emanated from the isolated reports that are not substantiated by *qaṭʿī* evidence. Consequently, when Anṣārī claims that there is an *ijmāʿ* in accordance with which it is impermissible for a *mukallaḥ* to not follow and act in accordance with Sharīʿa precepts that have not been explicated with proper disclosure, he is referring to those Sharīʿa precepts that are explicated in the form of the isolated report.

3. The third explanation is also given in Anṣārī's *Farāī'd al-uṣūl*. In accordance with this explanation, when a *mukallaḥ* takes recourse to the principle of *barā'a* after having ambiguous knowledge of Sharīʿa precepts, he necessarily exits from the folds of religion (*khurūj 'an al-dīn*). Ansari elaborates that in cases where a *mukallaḥ* follows and acts in accordance with his ambiguous knowledge i.e. by performing *iḥtiyāt*,

³¹⁰ See Chapter Four

he has certainty that he has fulfilled his responsibility as a Muslim. Conversely, when a *mukallaf* fails to follow or act in accordance with his ambiguous knowledge i.e. by applying *barā'a*, then he has certainty that he has not fulfilled his responsibility as a Muslim. Anṣārī notes that in accordance with the “great teachers”, a *mukallaf* who limits his obedience to those Sharī'a precepts that are known with certainty, and abandons those Sharī'a precepts that he does not know with certainty, is not considered as a Muslim³¹¹. They claim that this is because there is no doubt that there are only a few known Sharī'a precepts, whereas there are many unknown Sharī'a precepts.

In order to substantiate his claim, Anṣārī refers to many of his predecessors and contemporaries by pointing out that this view is also found in the renowned works of the likes of Shaykh al-Ṣudūq (d. 381/991), Muḥaqqiq al-Ḥillī (d. 676/1277), 'Allāma al-Ḥillī etc.³¹². For instance, he highlights:

And 'Allāma, in [his work entitled] *Nahj al-mustarshidīn* in the topic of establishing the infallibility (*iṣma*) of the Imams has [also] said that he upon whom is peace (i.e. the Imam) is necessarily the safeguard (*ḥāfiẓ*) of the precepts (*aḥkām*), for indeed the Book (*al-Kitāb*) and [Prophetic] *sunna* do not give

³¹¹ Anṣārī, *Farāi'd al-uṣūl* vol. 1, p. 185

³¹² *ibid* pp. 186-188

the details [of Sharī'a precepts], and exemption (*barā'a*) will lead to nullifying all the precepts³¹³.

Anṣārī suggests that the aforementioned statement demonstrates that 'Allāma has highlighted that the majority of Sharī'a precepts are unknown, and since it is wrong to apply the principle of *barā'a* and be exempt from all responsibility, it is incumbent upon a person to accept the infallibility of the Imams. Indeed, if a person does not do so, then he necessarily would not be considered to be a part of the religion, as within the Shiite tradition, the acceptance of the Imams is one of its fundamental tenants.

Nonetheless, Anṣārī's claim that in accordance with the great teachers there are only a few known and many unknown Sharī'a precepts once again reinstates the argument that the notion of *insidād bāb al-'ilm wa-l-'ilmī* appears to have been widely accepted by Anṣārī's predecessors.

Therefore, an amalgamation of all three of the aforementioned explanations provides sufficient evidence in establishing this premise, inasmuch as it proves that a *mukallaf* has ambiguous knowledge of Sharī'a precepts, and that it is not permissible for him to discard this knowledge by applying the procedural principle of *barā'a*.

³¹³ *ibid*, p. 187

5.4.3 The Third Premise

In accordance with this premise, if the first premise - i.e. the claim of *insidād bāb al ‘ilm wa-l ‘ilmī* - and the second premise - i.e. that there is ambiguous knowledge and that it cannot be discarded - are both accepted, then it follows that a *mukallaf* has no choice but to act in accordance with one of the following options:

1. He can undertake *taqlīd* (imitation) of another *mukallaf* - or more precisely a *mujtahid* - who upholds the belief that the door of knowledge is “open” (*infītāḥ*), and as a result maintain that the other *mukallaf* has access to knowledge that he does not have.
2. He can take recourse to the procedural principle of *iḥtiyāt*, and dissolve his ambiguous knowledge by being cautious and enacting every action he has *ẓann* or *shakk* of.
3. He can follow and act in accordance with the *ẓann* he has of Sharī‘a precepts, and in cases where he has no *ẓannī* knowledge of Sharī‘a precepts, he can take recourse to the procedural principles (*al-uṣūl al-‘amaliyya*).

In Muḏaffar’s analysis of this premise, he discusses the invalidity of the first two options, and then moves on to discuss the third option as part of the fourth

premise of the theory of *insidād*. With regards to the first option, Muḏaffar claims that:

The imitation (*taqlīd*) of another [who maintains belief] in the door of knowledge being open (*infītāḥ bāb al-‘ilm*) is not permissible. For indeed, if it is assumed that a *mukallaḑ* believes in *insidād* then how is it right for him to refer to someone who in accordance with him is mistaken³¹⁴.

It is found that the likes of Anṣārī and Khurāsānī also conform to this understanding, and conclude that it is impermissible for a person who believes that the door of knowledge is closed to refer to or imitate a person who believes that the door of knowledge is open³¹⁵. They both maintain that although an ignorant person (*al-jāhil*) should refer and imitate a knowledgeable person (*al-‘ālim*), in this case such reference and imitation makes no sense as it is not possible for person A, who for instance is ignorant but fundamentally believes that there is no access to knowledge, to imitate person B, who for instance is a knowledgeable person but believes that there is access to knowledge, for Person A knows that person B is wrong in maintaining such a belief.

³¹⁴ Muḏaffar, *Uṣūl al-fiqh* vol. 2, p. 28

³¹⁵ See Khurāsānī, *Kifāyat al-uṣūl* vol. 1, p. 95; Anṣārī, *Farāi’d al-uṣūl* vol. 1, pp. 194-196

Anṣārī further supports this stance by claiming that there is *al-ijmā‘ al-qat‘ī* where all Shiite scholars have unanimously concurred that it is impermissible for a person who believes that there is no access to knowledge to refer to a person who believes that there is³¹⁶. Therefore, the first option of this premise is collectively ruled out by both pre-Anṣārī and post-Anṣārī Uṣūlīs.

Nevertheless, with regards to the second option, Muḥaffar claims that:

[Concerning] taking recourse to *iḥtiyāṭ*, it indeed necessitates intense hardship (*al-ḥaraj*) and difficulty (*al-‘usr*), [and] rather it necessitates the disorder of society (*ikhtilāl al-niẓām*)³¹⁷.

This understanding is akin to the aforementioned third theory that was proposed by Sayyid Ṭabāṭabā‘ī to prove the epistemic validity of *ẓann al-muṭlaq*. Like Ṭabāṭabā‘ī, Muḥaffar too concludes that it is impermissible to take recourse to the procedural principle of *iḥtiyāṭ* as it causes hardship, difficulty and social disorder, however unlike Ṭabāṭabā‘ī, he evidently does this in the context of the theory of *insidād*.

Khurāsānī explains the relationship between hardship, difficulty and social disorder by elaborating that taking recourse to *iḥtiyāṭ* becomes impermissible for a *mukallaḥ* when hardship (*ḥaraj*) and difficulty (*‘usr*) reaches a stage

³¹⁶ See *ibid*, p. 194

³¹⁷ Muḥaffar, *Uṣūl al-fiqh* vol. 2, p. 28

where it cause social disorder for him³¹⁸. In other words, if the *mukallaf* is always preoccupied in being cautious and making sure that he has fulfilled every possible responsibility (*taklīf*) then this can lead to negatively affecting his day-to-day social life. Consequently, undertaking *iḥtiyāt* can prove to be too difficult for him, and as discussed previously, the legal maxims of *la ḥaraj* and *la ‘usr fī-l dīn* overrule the procedural principle of *iḥtiyāt*.

5.4.4 The Fourth Premise

Continuing on from the third premise, if it is accepted that following one of the first two aforementioned options is void, then the fourth premise of the theory of *insidād* concludes that a *mukallaf* – by default – has no choice but to accept the third option. Accordingly, he is required to follow and act in accordance with the *ẓann* he has of Sharī‘a precepts, and in light of this premise, it is found that although post-Anṣārī Uṣūlīs accept that *bāb al-‘ilmī* is “open”, they too accept that if the aforementioned three premises are proven to be true, then reason necessarily substantiates the epistemic validity of *ẓann al-muṭlaq*³¹⁹. This effectively implies that a *mujtahid* is able to use any evidence that emanates *ẓann* of Sharī‘a precepts in the process of deriving Sharī‘a precepts,

³¹⁸ See Khurāsānī, *Kifāyat al-uṣūl* vol. 2, p. 95

³¹⁹ See Anṣārī, *Farāī‘d al-uṣūl* vol. 1, pp. 209-211; Muṣaffar, *Uṣūl al-fiqh* vol. 2, pp. 28

except for those that he knows with certainty have been prohibited, such as *qiyās*³²⁰.

It is vital to note that similarly to the second theory, in accordance with this premise, whenever there is *ẓann* of something there is also room for doubt (*shakk*) of its opposite, as doubt is only alleviated when there is certainty. Therefore, the existence of *ẓann* always has two sides (*aṭrāf*); it either has a most preferred side (*rājih*) or a least preferred side (*marjūh*), whereby the latter is doubt, and whenever a *mukallaf* has *ẓann* of a Sharī‘a precept, the principle of *tarjīh al-marjūh ‘alā ‘l-rājih qabīh* would rationally lead to the judgment that it is blameworthy (*qabīh*) for him to follow and act in accordance with the least preferred side of *ẓann* – which is *shakk* - of a Sharī‘a precept. Rather, he must follow and act in accordance with the most preferred side.

Nevertheless, in accordance with the theory of *insidād*, taking recourse to the procedural principles (*uṣūl al-‘amaliyya*) is only effective in those cases where there is not any *ẓann* of Sharī‘a precepts³²¹. As discussed, the theory of *insidād* proposes that the *ẓann* that is emanated from the isolated report is epistemologically valid, and thus a *mukallaf* can follow and act in accordance with its indication. Owing to the fact that the isolated report is deemed as being epistemologically valid, its indication effectively dissolves most of the ambiguous knowledge that a *mukallaf* has of Sharī‘a precepts. Accordingly, the

³²⁰ *Ibid.*

³²¹ *Ibid.*, p. 29

mukallaf is at a position where he only has to take recourse to the procedural principles to dissolve any remaining ambiguous knowledge that has not already been resolved by the indication of the isolated report. Thus, according to the Uṣūlī proponents of the theory of *insidād*, when no *ẓann* is found, recourse to the procedural principles could be taken, to the extent that a *mukallaf* is even permitted to apply the principle of *barāʿa* to dissolve his remaining ambiguous knowledge of Sharīʿa precepts, as this would not take him outside the folds of religion.

5.5 Conclusion

It is apparent that amongst all the theories that establish the epistemic validity of *ẓann al-muṭlaq*, the theory of *insidād* provides the most comprehensive argument, and post-Anṣārī Uṣūlīs have not been able to disagree with any of its fundamental premises with the exception of the first premise. It is apparent that the reason behind their disagreement with the first premise is because post-Anṣārī Uṣūlīs have unanimously accepted that there is access to knowledge or *qaṭʿ* of Sharīʿa precepts. As such, they have exerted maximum effort in establishing a legal epistemology that accepts *ẓann al-khāṣ* (especial conjecture) that has been substantiated by the Divine Lawgiver Himself, which is held at the same epistemic pedestal as certain knowledge.

However, although post-Anṣārī Uṣūlīs unanimously accept the epistemic validity of *ẓann al-khāṣ*, the same cannot be said about pre-Anṣārī Uṣūlīs. This chapter has established that not all pre-Anṣārī Uṣūlīs have maintained that there is access to *qaṭʿ* or knowledge of Sharīʿa precepts and thus they have not wholly agreed upon the epistemic validity of *ẓann al-khāṣ*. As a result, some pre-Anṣārī Uṣūlīs have not strictly abided by the primary axiom of the non-validity of *ẓann* qua *ẓann*, but rather have displayed a tendency to accept the epistemic validity of *ẓann al-muṭlaq* or *ẓann* qua *ẓann* in their juristic derivation of Sharīʿa precepts.

Undoubtedly, this clearly demonstrates that the acceptance of *ẓann* qua *ẓann* – as opposed to just *ẓann al-khāṣ* – is not an unfamiliar concept within the Shiite tradition. Furthermore, it emphasises that it was not farfetched for the Akhbārīs to conclude that the Uṣūlī acceptance of *ẓann* was due to their legal theory being significantly influenced by the Sunni discourse.

Nevertheless, accepting the theory of *insidād* and thus recognising the epistemic validity of *ẓann al-muṭlaq* is not entirely sufficient in establishing the epistemic validity of the utilisation of a wider range of evidence in the juristic derivation of Sharīʿa precepts. As elucidated in this chapter, although the theory of *insidād* upholds every evidence that gives *ẓann* as being epistemologically valid unless its non-validity is proven by *qaṭʿī* evidence, in the context of the pre-Anṣārī jurisprudential discourse, the only *ẓannī* source that was actually available was the isolated report of the *maʿṣūm*. In light of

this, it would be fanciful, and indeed rather inaccurate, to decisively claim that if pre-Anṣārī Uṣūlīs had access to a wider range of evidence that gave *ẓann* of Sharīʿa precepts other than just the isolated report, then they would have necessarily extended the theory of *insidād* to also prove their epistemic validity.

This claim is supported by the fact that the theory of *insidād* – or any other theory that endeavours to establish the epistemic validity of *ẓann al-muṭlaq* – does not make any distinction between evidence that gives *ẓann* and evidence that gives more *ẓann* (*ghalabat al-ẓann*). Whilst it concludes that when a *mukallaf* finds no *ẓann*, he must refer to the procedural principles (*uṣūl al-ʿamaliyya*), the theory does not provide guidance of what a *mukallaf* is required to do should he find conflict between something that produces less conjecture and something that produces more conjecture. This again highlights that the theory of *insidād* was applicable in a context where the only *ẓann* that needed substantiating was that which was emanated from the isolated report. This is because if there were other sources that also emanated *ẓann* of Sharīʿa precepts, then rather than only establishing that a *mukallaf* has to give preference (*tarjīh*) to *ẓann* (or the *rājih*) over *shakk* (*marjūh*), the theory of *insidād* would also clarify whether he is required to give preference to an evidence that produces more *ẓann* over an evidence that produces less *ẓann*.

It can be concluded that the practical application of the theory of *insidād* was never centred upon substantiating *ẓann* qua *ẓann*; rather its function was

restricted solely to the substantiation of *ẓann* that was emanated from the isolated report. Therefore, it is implausible to extend its scope in order to substantiate the epistemic validity of a wider range of evidence that is available in the present day context. Nonetheless, it has become apparent from this chapter that there has been a paradigm shift in the discourse of Uṣūlī legal epistemology, inasmuch as prior to Anṣārī, not all Uṣūlīs unanimously held the belief that *bāb al-‘ilmī* was open, and that they had access to *ẓann al-khāṣ*. However, during the post-Anṣārī period, Uṣūlīs have unanimously maintained that *bāb al-‘ilmī* is open, thus indicating that Sharī‘a precepts can only be derived from *ẓann al-khāṣ* or *qaṭ‘ī* evidence.

CONCLUSIONS

The Shiite jurisprudential discourse of legal epistemology has witnessed various paradigm shifts. Due to the access the Shiites had to the impeccable (*maʿṣūm*) Imams, the initial development of their legal epistemology occurred significantly after the legal epistemology that was maintained within the mainstream Sunni tradition. A polemical encounter with the mainstream tradition ensured that Shiites originating from the formative era upheld a distinct understanding of legal epistemology that distinguished and sanctified their juristic derivation of Sharīʿa precepts (or *aḥkām al-Sharīʿa*) from the conventional Sunni derivation.

The fundamental epistemological underpinning, or the primary axiom, that was unwaveringly maintained during the formative period comprised of the non-validity of *ẓann* (conjecture) in the juristic derivation of Sharīʿa precepts. As elucidated from this research, by strictly abiding to the primary axiom, the Shiites denied the epistemic validity (*ḥujjiyya*) of any evidence that merely emanated *ẓann* – or *ẓannī* (conjectural) knowledge – of Sharīʿa precepts, and this particularly consisted of the evidence that was used in the mainstream juristic derivation. Instead, the Shiites argued that evidence could only be used if it emanated *qaṭʿ* (certainty) – or *qaṭʿī* (certain) knowledge – of Sharīʿa precepts.

This epistemological paradigm upheld during the formative period of Shiite legal epistemology was however transitory. The emergence of evolving social

factors, combined with the influence of the highly effective combination of formal logic and traditional epistemology that was offered in Sunni legal theory, led to the initial Shiite epistemological standpoint undergoing a significant transformation. The legal theory proposed by ‘Allāma is recognised as being pivotal in creating the first epistemological paradigm shift in the Shiite jurisprudential discourse, which resulted in the emergence of the Uṣūlī School, and the distinct feature that set the Uṣūlī School apart from the formative Shiite tradition was its acceptance of *ẓann* in the juristic derivation of Sharī‘a precepts. Nonetheless, the findings of this research reveal that during this period, the legal epistemology proposed by adherents of the Uṣūlī School was divided. On one hand, certain Uṣūlīs supported the epistemic validity of *ẓann al-muṭlaq* (conjecture qua conjecture), and thus argued for the epistemic validity of any evidence, even if it provided *ẓannī* knowledge of Sharī‘a precepts. On the other hand, other Uṣūlīs took a more cautious approach and claimed that evidence was only epistemologically valid (*ḥujja*) in the juristic derivation of Sharī‘a precepts if its utility was permitted by the Divine Lawgiver (*Shāri‘*).

Although the Uṣūlī tradition maintained a substantial stronghold on Shiite seminary circles for a significant period of time, this ambiguity that existed within the Uṣūlī opinion is found to be the key cause behind creating the second epistemological paradigm shift in the Shiite jurisprudential discourse. This time it was the adherents of the Akhbārī School who brought about this transformation, as they condemned the Uṣūlīs for blindly basing their discourse

of legal theory on mainstream Sunni legal theory, and as a result were failing to adhere to the Shiite primary axiom of the non-validity of *ẓann*. Based on this criticism, the Akhbārīs maintained that knowledge of Sharī‘a precepts could only be derived from evidence that emanated or produced *qaṭ‘*. As such, the predominant tendency displayed by the Akhbārīs was an acceptance of the epistemic validity of the reports (*akhbār*) that revealed the *sunna* (tradition) of the *ma‘ṣūm* as a valid source of knowledge, and a rejection of the epistemic validity of every other evidence - in particular the non-textual evidence – that was deemed as being *ẓannī*.

However, the legal epistemological paradigm initiated by the Akhbārīs was once again modified following the re-emergence of the Uṣūlī tradition, and the third and final paradigm shift is largely attributed to Anṣārī. It is noted that as Anṣārī’s legal theory entitled *Farāī‘d al-uṣūl*, alongside other prominent legal theories of his contemporaries, are currently studied at different levels within Shiite seminaries studies, the Shiite jurisprudential discourse has continued to operate within the epistemological standard set forth by post-Anṣārī Uṣūlīs until the present day.

Owing to the fact that post-Anṣārī legal theory has been formed around the criticism posed by the Akhbārīs, it sensitively accepts the primary axiom of the non-validity of *ẓann*. In fact, the likes of Muẓaffar have gone as far as arguing that the Akhbārīs wrongly criticised the Uṣūlīs, as the Uṣūlī tradition has never accepted the epistemic validity of *ẓann*. As a result, a distinct feature of post-

Anṣārī legal epistemology has been its insistence on the epistemic validity of evidence that either emanates *qaṭʿ* or *ẓann al-khāṣ* (especial conjecture). As indicated, the Uṣūlīs have tactfully reasoned that the epistemic validity of the latter type of evidence is established or substantiated by the Divine Lawgiver Himself. In other words, although such evidence only produces *ẓannī* knowledge, the Divine Lawgiver permits its utility in the juristic derivation of Sharīʿa precepts, and thus He allows a *mujtahid* to discard the primary axiom when “especial” evidence is available.

From analysing the various epistemological paradigm shifts that have occurred in the Shiite jurisprudential discourse, it becomes apparent that the Shiites have resolutely endorsed the epistemic validity of the *sunna* of the *maʿṣūm* that is reported in the form of *khavar al-wāḥid* (the isolated report). Although the isolated report was rejected in the formative period, as it merely emanated *ẓannī* knowledge of Sharīʿa precepts, this dismissal was almost immediately retracted as a result of the efforts made by Ṭūsī. Since then, by operating within the limits set by each of the paradigm shifts, both the Uṣūlīs and the Akhbārīs have endeavoured to give different argumentations and justifications to establish or substantiate the epistemic validity of the isolated report.

Unlike the Akhbārīs, the Uṣūlīs have unanimously accepted that the isolated report produces *ẓannī* knowledge of Sharīʿa precepts. Accordingly, within the parameters set forth in the epistemic paradigm created by pre-Anṣārī Uṣūlīs, the epistemic validity of the isolated report was at times justified or

substantiated by taking recourse to theories that established the epistemic validity of *ẓann al-muṭlaq* in the juristic derivation of Sharīʿa precepts. Meanwhile, within the limits of the epistemic paradigm created by post-Anṣārī, or contemporary, Uṣūlīs, the epistemic validity of the isolated report has been substantiated on the basis that it produces especial conjecture that is approved by the Divine Lawgiver.

As elucidated, knowledge – irrespective of whether it is deemed as being *qaṭʿī* or *ẓannī* – that is emanated from the isolated report is considered as the most widely utilised evidence from which the majority of Sharīʿa precepts or *fiqh* are inferred. Accordingly, it is not improbable to conclude that the purpose of every epistemic paradigm shift that occurred within the Shiite jurisprudential discourse was primarily to provide a stronger justification for the epistemic validity of the isolated report. This understanding somewhat supports the argument that the function of *uṣūl al-fiqh* is nominal, in that it only systematically justifies pre-occurring Sharīʿa precepts that are found in the works of *fiqh*, as opposed to providing a theoretical framework that governs how Sharīʿa precepts or *fiqh* ought to be derived.

Nonetheless, in line with the definition of *uṣūl al-fiqh* that is stipulated in the contemporary discourse, its function is clearly to present a systematic framework that specifies the key principles that can be used in the juristic derivation of Sharīʿa precepts. This definition – at least theoretically – maintains that the role of *uṣūl al-fiqh* is not solely restricted to justifying pre-

existing *fiqh*, but instead also comprises of being able to provide continuous solutions towards establishing what *fiqh* ought to be in altering contexts. In light of the epistemological underpinnings offered by this framework, the post-Anṣārī Uṣūlī discourse unwaveringly maintains that *fiqh* should only be derived from evidence that either emanates *qaṭʿ* or *ẓann al-khāṣ* of Sharīʿa precepts, and hence any evidence that emanates *ẓann qua ẓann* is rejected. In practical terms, if a *mujtahid* is to utilise one or both of the former two types of evidence, then he is granted with excusability and will not be held accountable or be subject to chastisement, even if by following the evidence he is led to act in contradiction to the objective reality (*wāqiʿ*). On the other hand, if he is to utilise the latter type of evidence, then the *mujtahid* cannot be granted with excusability, but rather is held accountable and subjected to chastisement.

In order to support and preserve the primary epistemological underpinning, or the primary axiom, of the non-validity of *ẓann qua ẓann*, the post-Anṣārī discourse offers rational argumentation and certain textual evidence, in particular the verse of the Qurʾān that states: “Verily, *ẓann* does not take the place of truth³²².” In line with the ‘Adliyya theological understanding, the majority of post-Anṣārī Uṣūlīs collectively agree that the Divine Lawgiver acts in the same way as rational human beings, as He is the Chief of all rational beings (*raʾis al-ʿuqalā*). Accordingly, in theory, reason (*maqām al-thubūt*) judges that it is blameworthy (*qabīḥ*) for a master, whether human or divine, to

³²² Qurʾān 10:36

hold a servant – or a *mukallaf* – accountable without fully explicating the duty (*taklīf*) that is required from him. Apart from this mainstream rational understanding, a second rational observation is proposed by Ṣadr and the adherents of the School of *ḥaqq al-ṭā‘a*. As highlighted in Chapter Two, Ṣadr rejects the mainstream position, and alternatively establishes that reason only judges the non-validity of *ẓann* at a practical level (*maqām al-ithbāt*) and not at a theoretical level.

In summary, it is evident that there is discrepancy amongst the contemporary Uṣūlīs regarding the rational argument that is used to establish the primary axiom. Nonetheless, it is unanimously agreed that the verses of the Qur’ān that prohibit following and acting in accordance with *ẓann* are *irshādī* (instructive), inasmuch as the Uṣūlīs admit that the Divine Lawgiver is simply instructing – in the sense of re-affirming - the Muslims of an obligation that their reason independently arrives at. Indeed, by rendering the verse as *irshādī*, contemporary Uṣūlīs ascertain the fact that the primary axiom is not viewed as a theological dictum of faith, but rather is a concept that is purely rational or epistemological.

This research has clarified that the rational arguments used to establish the non-validity of *ẓann* are based upon the contemporary Uṣūlī understanding of the concept of *bayān al-tām* or *qaṭ‘*, which effectively indicates that following and acting in accordance with *ẓann* or conjectural knowledge is invalid when one has access, or the choice, to use *qaṭ‘* or evidence that is fully explicated by

the Divine Lawgiver. Therefore, as a result of the epistemic paradigm established by Anṣārī, post-Anṣārī Uṣūlīs have maintained a further epistemological underpinning – or what can be categorised as the second fundamental epistemological underpinning of contemporary Uṣūlī legal theory - which is based upon the essential epistemic validity of *qaṭʿ* (*ḥujjiyyat al-qaṭʿ*).

In the contemporary Uṣūlī discourse, *qaṭʿ* is defined as being synonymous to *ʿilm* and *yaqīn*, and as a result the Uṣūlīs concur that whenever a person has *qaṭʿ* of a Sharīʿa precept, his or her *qaṭʿ* always accurately corresponds to the objective reality (*wāqiʿ*), or that which is in the Mind of the Divine Lawgiver. They argue that this is because *qaṭʿ* (or certainty) by its very nature possesses the essential properties of *kashfiyya* (disclosure) and *tarīqiyya* (reflectiveness), and thus at the level of conception (*taṣawwur*) it always accurately reflects the objective reality. In light of the essential properties of *qaṭʿ*, post-Anṣārī Uṣūlīs have offered various rational arguments to establish its epistemic validity in the realm of Sharīʿa. Following the *ʿAdliyya* understanding of rational praiseworthiness and blameworthiness (*al-ḥusn wa-l qubḥ ʿaqlī*), the overriding opinion amongst post-Anṣārī Uṣūlīs is that the property of epistemic validity is necessarily correlated to the essence of *qaṭʿ*, and thus it is praiseworthy – or obligatory – to follow and act in accordance with it.

In contrast, the later generation of post-Anṣārī Uṣūlīs have instead chosen to conclude that the property of epistemic validity is not essential to *qaṭʿ*, but rather is postulated. On one hand, scholars such as Ṣadr and his contemporaries

have advocated the theory of *ḥaqq al-ṭāʿa*, which proposes that ‘epistemic validity’ is postulated by the Divine Lawgiver due to Him being the Creator (*khāliq*) and the Proprietor (*mālik*) of all existence, and since the Divine Lawgiver deserves the right of obedience, it is obligatory to follow and act in accordance with *qaṭʿ*. On the other hand, scholars including Iṣfahānī and Muṣaffar explain that epistemic validity is a property of *qaṭʿ* that is postulated by the convention of rational people (*banāʾ al-ʿuqalāʾ*), and consequently they maintain that since the Divine Lawgiver is the Chief of all rational people, He like other rational people also judges *qaṭʿ* to be epistemologically valid.

In essence, it is concluded that all contemporary Uṣūlīs – or for that matter, all Uṣūlīs – are of the opinion that *qaṭʿ* is epistemologically valid, and thus the Uṣūlī School advocates that it is obligatory for a *mujtahid* to follow and act in accordance with *qaṭʿ* in his derivation of Sharīʿa precepts. This epistemological underpinning paves the way for a further epistemological underpinning that is maintained in the post-Anṣārī Uṣūlī discourse. The third epistemological underpinning of contemporary Uṣūlī legal theory is the epistemic validity of especial conjecture (*ḥujjiyyat al-ẓann al-khāṣ*).

Although post-Anṣārī Uṣūlīs uphold the primary axiom of the non-validity of *ẓann*, a distinct feature of their legal epistemology is that they maintain the epistemic validity of conjecture – or more precisely especial conjecture – that has been permitted by the Divine Lawgiver. As it has been substantiated by *qaṭʿī* evidence, especial conjecture can be used in the juristic derivation of

Sharī'a precepts, as its substantiation indicates that there is no room for any doubt that the Divine Lawgiver has permitted a *mujtahid* to act in accordance with that particular *ẓannī* evidence. However, from the critical analysis undertaken on Muẓaffar's substantiation of the especial conjecture that is produced from the isolated report, this research has revealed that there is a significant lack of sufficient proof for each of the "*qaṭ'ī*" evidence he presents to substantiate its epistemic validity.

Therefore, it can be concluded that in accordance with Muẓaffar's presentation of evidence – which in fact is the evidence presented by all contemporary Uṣūlīs – there is no absolute *qaṭ'*, *'ilm* or *yaqīn* from the Divine Lawgiver that substantiates the epistemic validity of the isolated report, and enables a *mujtahid* to follow and act in accordance with it. This however poses a major setback for the Uṣūlīs, as the most largely used evidence from which Sharī'a precepts are extrapolated are the isolated reports that reveal the *sunna* of the *ma'ṣūm*. It becomes apparent that this concern was indeed raised by certain pre-Anṣārī Uṣūlīs, and thus rather than arguing for the epistemic validity of particular substantiated evidence that produces especial conjecture, they claimed the epistemic validity of conjecture qua conjecture (*ẓann al-muṭlaq*) itself.

At first glance, a key implication of the pre-Anṣārī acceptance of *ẓann al-muṭlaq* appears to be that a wider range of evidence that potentially reveal knowledge of Sharī'a precepts - whether certain or conjectural in nature –

becomes epistemologically valid in the juristic process of the derivation of Sharī'a precepts. However, this proposition cannot be directly attributed to the pre-Anṣārī Uṣūlīs, for it seems that the only conjectural evidence they intended to authenticate through substantiating the epistemic validity of *ẓann al-muṭlaq* was the isolated report. As such, in order extend the pre-Anṣārī understanding to include a wider range of evidence, it would first need to be proved that pre-Anṣārī jurists had access to, and validated, evidence other than the isolated report that produced *ẓann* of Sharī'a precepts.

It becomes evident that as an outcome of the second and the third epistemological underpinnings discussed thus far, the contemporary Uṣūlī discourse has theoretically restricted the utilisation of evidence in the derivation of Sharī'a precepts to only those which emanate *qaṭ'* or *ẓann al-khāṣ*. Indeed, this research reveals that the fundamental epistemological foundations have evolved following each paradigm shift that has occurred within the Shiite jurisprudential discourse. Nonetheless, it is debatable whether these developments have occurred as a result of the endeavours undertaken by Shiite scholars to provide stronger justifications for why certain evidence is pre-assumed to be epistemologically valid, or whether they have attempted to adhere to their definition of legal theory and sincerely evaluate the validity of each evidence available in light of the epistemological developments made over time.

However, irrespective of this, this research has highlighted that the epistemological underpinnings that have been maintained in contemporary Shiite legal theory have made various assumptions. Undoubtedly, if it is accepted that the purpose of legal theory is to provide a systematic framework that effectively acts as a tool for deriving *fiqh* that is able to deal with the continuous challenges and questions that are posed by evolving societies, then it is imperative that these assumptions are also evaluated against measures such as relevance and accuracy in the current day context.

The fundamental assumption that is incorporated within the contemporary Uṣūlī discourse relates to the accuracy of sense perception. As highlighted in Chapter Three, post-Anṣārī Uṣūlīs recognise that *qaṭʿ* – in the context of *ʿilm* or *yaqīn* – always essentially discloses and reflects the objective reality. This is based on the view that at the level of conception (*taṣawwur*), the mind - of a person who possesses certainty – apprehends a particular proposition, whereby the sensory organs send a message to the mind so that it can accurately cognise and apprehend the simple concept or immaterial form of the subject or the predicate of that particular proposition, and thus acquire knowledge of it. However, as this research has explicated, the assumed accuracy of the mind’s faculty of sense perception is in fact questionable, as it is found that an individual’s sensory organs can lead to potentially deceiving him or her at the level of conception. Accordingly, it is possible to conclude that sense perception can at times be inaccurate in disclosing or reflecting the objective reality.

The position held by the Uṣūlīs can be described as being akin to the epistemological theory of naïve realism. In accordance with the naïve realists, the mind's faculty of sense perception has the capacity to provide direct or complete awareness of the objective reality or external world³²³. As one of the first proponents of naïve realism was Aristotle³²⁴, it can be insinuated that this view was first introduced within the realms of the Muslim tradition during the period it witnessed a significant influx of Greek works. Aspects of Greek philosophical and epistemological deliberations, in particular Aristotle's formal logic, were adopted and developed in the Muslim jurisprudential discourse, and it is evident that the Uṣūlīs have remained dedicated in upholding what can essentially be described as Aristotelian naïve realism until the present day.

In contrast to naïve realism, the discourse of philosophy, or more precisely epistemology, discusses the theory of representative realism. Representative realists argue that the mind is **not** able to directly experience the objective reality or external world through its faculty of sense perception; rather, the sensory organs only facilitate in providing ideas or representations of the objective reality. This theory is based on the notion that the mind's faculty of sense perception is in fact fallible; however, instead of taking a skeptical approach and wholly denying the possibility of attaining any knowledge of the objective reality, representative realism suggests that the mind is able to gain

³²³ For more information on naïve realism see Olson, Robert G. *A Short Introduction to Philosophy* (New York: Harcourt, Brace & World, 1967) pp. 21-22

³²⁴ Irwin, Terence H. *Aristotle's First Principle* (Oxford: Clarendon, 1988), p. 26

knowledge of the objective reality, in the sense that it constantly interprets the representations that it derives from its faculty of sense perception³²⁵.

The theory of representative realism is popularly attributed to prominent early modern philosophers such as Rene Descartes (d. 1650) and John Locke (d. 1704)³²⁶, who recognised the fallibility of sense perception in their epistemology. However, it is important to note that the overriding influence of any form of naïve realism was essentially brought to an end following the inception of quantum theory in the discourse of physics. Prior to the findings of quantum theory, the discourse of physics – or natural sciences – proposed that it was possible to determine the nature of the external world with certainty, inasmuch as the mind was able to inductively determine how the external world behaves through the use of sense perception. However, after examining the behavior of particles at an atomic and sub-atomic level, quantum physics concluded that it is not possible to determine the behavior of the external world at a microscopic level, thus effectively establishing that sense perception cannot lead to complete certainty³²⁷.

The findings of quantum theory have been adopted in the present day contemporary discourse of philosophy, and as an alternative to the theories of naïve realism and representative realism, it also advocates numerous epistemic

³²⁵ For more information on representative realism see Olson, *A short introduction to Philosophy*, pp. 22-30

³²⁶ *Ibid.* pp. 25-30

³²⁷ See Hawking, Stephen W. *A Brief History of Time* (New York: Batman Books, 1998), pp. 38-44

theories that consider the concept of how the mind acquires knowledge of the objective reality or external world, whilst maintaining the underlying feature of the fallibility of sense perception³²⁸. Indeed, a detailed examination of these contemporary epistemic theories is beyond the remit and scope of this research, however what becomes apparent is that naïve realism, or the notion of having certainty – or *qatʿ* – in the form that it has been described in the contemporary Uṣūlī discourse is a concept that is no longer widely accepted in modern epistemology.

It is clear from the findings of this research that the assumption of the accuracy of sense perception is not religious or theological, but rather it is purely epistemological. As pointed out by Khumaynī, in order to avoid convoluting the discourses, the discussions that pertain purely to the discourse of epistemology – or as he suggests, the discourses of logic or philosophy – should only be considered as a subject matter of that particular discourse, and as such omitted from the discourse of *uṣūl al-fiqh*. If Khumaynī’s understanding is to be maintained, then it necessarily follows that matters that are purely epistemological in nature must be taken as basic presumptions (*mabādī al-taṣdīqiyya*) in *uṣūl al-fiqh*. As a result, it is imperative that the assumption of the accuracy of sense perception is revisited in light of new discoveries made in contemporary epistemology.

³²⁸ For a comprehensive study on contemporary epistemology and its theories of knowledge see Pollock, John L. *Contemporary Theories of Knowledge*, 2nd edn. (Totowa NJ: Rowman and Littlefield, 1999)

Interestingly, even if one was to disagree with Khumaynī's understanding, the same implications arise. For instance, if it is alternatively claimed that as the primary function of *uṣūl al-fiqh* is to provide a systematic framework for arriving at knowledge of Sharī'a precepts, it is necessary that discussions that are purely epistemological must also be discussed within it, then this would imply that since the assumption of the accuracy of sense perception is not religious or theological, it must be constantly appraised and renovated in Uṣūlī legal epistemology.

In essence, irrespective of the stance one takes, it is evident that meta-legal epistemological developments cannot be ignored in the Muslim jurisprudential discourse. As Aristotelian epistemology was at one stage significantly inaugurated within the Shiite jurisprudential discourse, it is visible that the Shiite tradition – in particular during the era of 'Allāma and his contemporaries – was previously more open to adopting and incorporating innovations and developments from other sciences. Furthermore, it is highly feasible to conclude that the innovative progress being made in the Shiite jurisprudential discourse was put to an end following the Akhbārī onslaught targeted towards the Uṣūlīs. As a result, the contemporary Uṣūlī discourse has remained defensive in its approach to legal epistemology, by instead choosing to focus on proving that the Akhbārīs have misconstrued the Uṣūlī position. Indeed, rather than endeavoring to produce a systematic framework that enables a *mujtahid* to derive Sharī'a precepts based on a legal epistemology whose

epistemic underpinnings are founded on new developments made in epistemology, contemporary Uṣūlīs – despite establishing that the whole discourse of legal epistemology is in fact rational – have striven to justify how their legal epistemology is in sync with the Shiite legal epistemology that existed in the formative era. This highlights that apart from producing a systematic framework, a key concern of the Shiite jurisprudential discourse was to maintain its legitimacy and authority within Shiite seminary circles.

In summary, a critical study of the theories, findings and developments proposed in contemporary epistemology regarding the fallibility of sense perception, and the potential implications this may have on the contemporary Shiite jurisprudential discourse, is imperative, however this is beyond the scope of this research. Nevertheless, if the fundamental Uṣūlī assumption of the accuracy of sense perception was to be re-evaluated against the concept of the fallibility of sense perception that is widely maintained within contemporary epistemology, then it is undisputable that the key epistemological underpinnings of Uṣūlī legal theory would be transformed substantially.

Firstly, and most critically, by upholding the fallibility of the mind's faculty of sense perception, the epistemological underpinning of the epistemic validity (*hujjiyya*) of *qaṭ'* in the realm of legislation would be curtailed. As discussed, the popular understanding amongst contemporary Uṣūlīs is that the property of epistemic validity is essentially related to *qaṭ'*, and thus it is praiseworthy, and

consequently obligatory, to follow and act in accordance with its indication. However, as soon as sense perception is deemed as being fallible, it is no longer possible to propose that the property of epistemic validity is essentially related to the essence of *qaṭʿ*, because in line with the Uṣūlī understanding, it is impossible for a person to ever have *qaṭʿ* about the objective reality if his or her sense perception does not, at the level of conception, accurately reflect or disclose it. Accordingly, it is clear that if *qaṭʿ* is nonexistent then by priority so is its essential property of epistemic validity, as it cannot be deemed as praiseworthy, and consequently obligatory, to follow and act in accordance with something that does not exist.

The less popular understanding amongst the contemporary Uṣūlīs is that the property of epistemic validity is postulated to *qaṭʿ*, either due to the convention of rational people (*banā al-ʿuqalā*), or because it has been directly postulated by the Divine Lawgiver Himself. Similarly to the aforementioned case, if due to the fallibility of sense perception, *qaṭʿ* is nonexistent, then by priority it is not possible for the convention of rational people to agree that it is obligatory to follow and act in accordance with something that is nonexistent, nor can the right of obedience (*ḥaqq al-ṭāʿa*) that is possessed by the Divine Lawgiver create an obligation upon a *mukallaḥ* to do so.

Secondly, by maintaining the fallibility of the mind's faculty of sense perception, the epistemological underpinning of the epistemic validity of *ẓann al-khāṣ* would be affected. As shown, in line with the contemporary Uṣūlī

thought, *ẓann al-khāṣ* is only recognised as being epistemologically valid if it is substantiated by *qaṭʿ*. However, if *qaṭʿ* is found to be nonexistent, then the epistemic validity of *ẓann al-khāṣ* cannot be substantiated and held as a legitimate source of law.

If it is ascertained that there is no access to *qaṭʿ* nor *ẓann al-khāṣ* of Sharīʿa precepts, a *mukallaf* can take a skeptical approach and discard following or acting in accordance with any Sharīʿa precept, on the basis that he cannot attain any knowledge of them, or conversely he can choose to accept the knowledge of Sharīʿa precepts that is emanated from evidence that gives sheer *ẓann*. As established in Chapter Five, the former option is negated due to the fact that there is ambiguous knowledge (*ʿilm al-ijmālī*) of Sharīʿa precepts that is emanated from *ẓannī* evidence. This is based on Anṣārī's argument, which upholds that there is an *ijmāʿ* that claims that a *mukallaf* cannot discard following Sharīʿa precepts because he has ambiguous knowledge, and if he did, then the *mukallaf* necessarily exits from the folds of religion (*khurūj ʿan al-dīn*). Accordingly, preference must be given to the latter option of following and acting in accordance with evidence that only give *ẓann*. In essence, if it were acknowledged that the mind's faculty of sense perception is fallible, then the third epistemological underpinning of the primary axiom of the non-validity of *ẓann qua ẓann* that is currently maintained in the contemporary Uṣūlī discourse would be completely modified, as *ẓann qua ẓann* would now be recognised as epistemologically valid.

It can be concluded that if the assumption of the accuracy of sense perception is retracted from the contemporary Uṣūlī discourse, the potential effects on the aforementioned epistemological underpinnings are substantial and would essentially require the Uṣūlīs to reevaluate and modify their whole discourse of legal epistemology. It is clear then that the only feasible way in which the Uṣūlīs would be able to maintain their existing legal epistemology is by seeking an alternative explanation to the current assumption of the infallibility of sense perception, which justifies their epistemological underpinnings, particularly of the existence and epistemic validity of *qaṭʿ*. However, proving the existence of *qaṭʿ* on the basis of a new justification is an extremely challenging task, and it is highly unlikely that a new theory that conclusively provides sufficient and sustainable proof will be attained.

Therefore, if it is established that the existence and epistemic validity of *qaṭʿ* cannot be satisfactorily verified, then in line with the findings of this research, evidence of a *ẓannī* nature must be substantiated, and it is essential that the Uṣūlīs reintroduce a modified version of *dalīl al-insidād* to their legal epistemology. As discussed, in accordance with the pre-Anṣārī theory of *insidād*, the “door of knowledge is closed” as there is no access to evidence that either emanates *qaṭʿ* or *ẓann al-khāṣ* of Sharīʿa precepts; thus, the only evidence from which knowledge can be derived is that which emanates mere *ẓann*.

It is proposed that a modified version of the theory of *insidād* is reintroduced as opposed to the original theory that was advocated by certain pre-Anṣārī Uṣūlīs for two key reasons. Firstly, although the theory of *insidād* theoretically validates a wide range of evidence, this did not take place in practice within the pre-Anṣārī jurisprudential discourse; rather, its function was restricted to substantiating the epistemic validity of the isolated report alone. However, in the current context, there is a broader range of evidence that potentially reveal or emanate *ẓannī* knowledge of Sharīʿa precepts, as if there is no access to *qaṭʿ* due to the fallibility of sense perception, then it follows that there is no *qaṭʿ* evidence that can negate the epistemic validity of any particular *ẓannī* evidence. Consequently, in the present day, knowledge of Sharīʿa precepts may not only be attained from the classical four-fold categorisation of evidence, but also from the traditional evidence that is commonly accepted in the mainstream Sunni discourse, such as *qiyās* (analogy), *maṣlaḥa* (public interest), *istiḥsān* (juristic preference), *ʿurf* (social custom) etc. Furthermore, in addition to the traditional evidence, findings from developments that have been made in the contemporary discourses of natural science and social science, together with the numerous hermeneutical methods that have been proposed by Muslim thinkers, can also act as evidence that potentially provides knowledge of Sharīʿa precepts.

Secondly, since the pre-Anṣārī theory of *insidād* was only concerned with substantiating the epistemic validity of the isolated report, it does not provide guidance on how two or more conflicting evidence that provide *ẓann* of Sharīʿa

precepts may be reconciled. At most, the theory indicates that when *ẓann* cannot be found, or if there is conflict between the *ẓann* that is emanated from the isolated reports, one must resort to the procedural principles (*uṣūl al-‘amaliyya*). However, in the present day, as there is access to a wider range of evidence, it is plainly evident that certain evidence emanates more *ẓann*, whilst other evidence emanates relatively less *ẓann*. In other words, whilst some evidence produces more probable knowledge of Sharī‘a precepts, other evidence produces less probable knowledge of Sharī‘a precepts, and a modified theory of *insidād* would dictate that preference (*tarjīh*) must be given to the more probable evidence – which is *rājih* - over the less probable evidence – which is *marjūh*.

By implementing a modified theory of *insidād*, not only would a new method of deriving *fiqh* be established, but it would also create a vital opportunity to resolve the longstanding reservations that exist between the traditional understanding of Muslim law and the modern discourse of Human Rights. For instance, controversial Sharī‘a precepts concerning the rights of women and non-Muslims can be reassessed and re-derived in the current context through not only examining the conjecture that is produced from the apparent indication of the textual evidence from which they have originally been derived, but also from evaluating the conjecture that is produced by evidence found in social sciences such as psychology, political science, economics, anthropology, etc., which also provide evidentiary knowledge of such issues. Indeed, if when applying the modified theory of *insidād*, it is found that the

evidence that is provided by the sources of social sciences produces more conjecture or probability in comparison to the evidence from the textual sources, then the former evidence must be given more preference.

This clearly illustrates that in addition to developing and incorporating a modified theory of *insidād*, changing the assumption of the accuracy of sense perception would also necessarily require the jurisprudential discourse to produce a criterion that can be used by a *mujtahid* to systematically decipher the level of probability that is produced from individual sources. Although a critical study of such a criterion is beyond the scope of this research, it is clear that this is of paramount importance to Uṣūlī legal theory, as if a modified theory of *insidād* becomes actuated as the key method of acquiring knowledge of Sharī'a precepts, it is essential that a meticulous criterion is developed in order to aid a *mujtahid*'s decision over when to prefer to follow or act in accordance with one particular evidence over another.

For instance, it is found that every Sharī'a precept regarding the subject of apostasy is in fact derived from the *sunna* of the *ma'ṣūm* that is transmitted via the conjectural textual evidence of the isolated reports. However, the conjecture that is produced from the apparent indication of such isolated reports evidently contradicts the conjecture that is produced from other evidence. For example, the isolated report from the Prophet states: "Whoever

changes his Islamic religion, kill him³²⁹.” The apparent indication – which is akin to a non-contextual indication – of this report, signifies the Sharī‘a precept of killing the apostate. However, undoubtedly it is highly questionable whether a *mujtahid* is justified in deriving a Sharī‘a precept that decides upon the life or death of a person by merely trusting the conjectural apparent indication that is produced from an isolated report.

In accordance with the modified theory of *insidād*, such a justification can only be achieved if the conjecture produced from the aforementioned isolated report is not contradicted by other conjecture that is produced from other forms of evidence, but rather is supported. Accordingly, it is found that the Qur’an too deals with the subject matter of apostasy in several verses, and although it describes that an apostate would be dealt in harsh terms in the hereafter, none of the verses prescribe or apparently indicate upon a worldly death penalty for the apostate. Therefore, by considering the aforementioned isolated report in light of the apparent indication of the verses of the Qur’an, it can be affirmed that the Qur’an, as an independent source of evidence, neither supports nor contradicts the isolated report.

However, in his book entitled *The Punishment of Apostasy in Islam*, Rahman points out that there in fact is a significant amount of textual evidence, either in the form of verses or reports, which contrastingly indicate that it is forbidden to

³²⁹ See Shah, Niaz A “Freedom of Religion: Kornaic and Human Rights Perspectives”, Asia-Pacific Journal Human Rights and the Law 1.2 (2005) pp. 69-88

compel a person to join or re-join any religion, including Islam, and hence imply that only God reserves the right to judge and chastise an apostate³³⁰. In other words, there exists a clear conflict between the apparent indications of different textual evidence. On one hand, a group of reports and verses produce “conjecture”, which indicates that an apostate is deserving of worldly chastisement, whereas on the other hand a significant group of reports and verses produce “counter conjecture”, which indicates that an apostate is **not** deserving of worldly chastisement.

A possible explanation for such contradiction between textual evidence is that the former group of evidence – i.e. the isolated report that prescribes worldly punishment for the apostate – is either fabricated, or it has been expressed in a particular context. In support of the latter option, it can be suggested that based on the conjecture produced in the discourse of Muslim history, or by historians, it is very likely that the aforementioned isolated report was expressed in the context when people used to convert to Islam just so that they could spy on the Prophet and the Muslims, and then revert back to their former religions³³¹. Therefore, in accordance with the conjecture produced by this historical context, it is possible to deduce that the worldly chastisement issued by the Prophet was not in fact for apostasy or because a person decided to change their religious affiliation, but rather was in response to treason.

³³⁰ See Rahman, S A. *Punishment of Apostasy in Islam*, (Malaysia: The Other Press Sdn Bhd, 2006), pp. 133-135

³³¹ See Jordan, David A “The Dark Ages of Islam: Ijtihad, Apostasy, and Human Rights in Contemporary Islamic Jurisprudence” *Wash. & Lee Race & Ethnic Anc.* 9.55 (2003) pp. 55-71; Shah, N “Freedom of Religion” pp. 81-82; Rahman, *Punishment of Apostasy in Islam*, p. 108

Moreover, a further evidence that substantially produces conjecture against the worldly chastisement for apostasy are the norms that have been acknowledged within the contemporary discourse of Human Rights. Article 18 of the Universal Declaration of Human Rights produces conjecture that signifies that any form of worldly chastisement for apostasy acts against a person's natural right of autonomy and religious freedom.

Although this research is not directly concerned with how one type of conjecture is given preference over another, from analysing the matter of apostasy in line with the modified theory of *insidād*, it becomes apparent that a *mujtahid* cannot solely follow and act in accordance with the conjecture that is produced from the isolated report, but he must also take into account the counter conjecture that is produced from a wide range of other evidence. Only after considering every possible conjecture produced from a wider range of evidence can a *mujtahid* derive a specific precept. Thus, if a *mujtahid* was to hypothetically derive a Sharī'a precept that an apostate is deserving of worldly chastisement, then he must justify his derivation by using strong evidence whose conjecture undermines the conjecture that is produced from any counter evidence.

In conclusion, it becomes clear that the discourse of Uṣūlī legal theory can be extended to consider the epistemic validity of a wider range of evidence, which in turn may lead to potentially accepting a greater variety of sources of law in the derivation of Sharī'a precepts. However, this opportunity has been

crucially limited by the rational – or Aristotelian – assumption of the accuracy of sense perception that is currently acknowledged in Uṣūlī epistemology. Using this assumption as their basis, contemporary Uṣūlīs have arrived at key epistemological underpinnings that have effectively restricted the derivation of Sharīʿa precepts from just textual evidence alone. However, this research has revealed that since these epistemological underpinnings, and the assumption upon which they are based, are all rationally derived as opposed to being religious or theological in nature, it is possible to reevaluate them against new findings and developments.

Whilst the contemporary discourse of epistemology itself is not free from limitations, by taking an insiders perspective it is visible that the current epistemological assumption of the accuracy of sense perception needs to be replaced by a feasible assumption that is more widely accepted in the present day discourse of epistemology. Therefore, similarly to how historical changes in epistemological assumptions and underpinnings have demanded epistemic paradigm shifts within the Shiite jurisprudential discourse over the course of time, it is likely that an evaluation of the existing epistemological foundations will require a further paradigm shift. In summary, in order for Sharīʿa precepts to continually provide egalitarian instructions that direct proper conduct in all aspects of a human being's life, and thus guide human beings to prosperity and perfection in both an individual and social-communal capacity, a process of constant revaluation and appraisal of epistemic standards in light of human advancements in other sciences is necessary.

Glossary

<i>‘adl</i>	justice
<i>aḥkāṃ</i>	precepts of Sharī‘a
<i>Ahl al-Bayt</i>	descendants from the family of the Prophet
<i>al-ḥusn wa-l qubḥ ‘aqlī</i>	intelligibility of praiseworthiness and blameworthiness
<i>‘aql</i>	reason
<i>baḥṡh al-khārij</i>	graduate studies at Shiite religious seminaries
<i>banā’ al-‘uqalā’</i>	the convention of rational people
<i>bayān al-tām</i>	full explication
<i>dalīl</i>	evidence or substantiated evidence
<i>fiqh</i>	jurisprudence or the corpus of derived sharia precepts
<i>ghalabat al-zann</i>	preponderant conjecture
<i>ghayba</i>	occultation
<i>ḥujja</i>	epistemologically valid
<i>ḥujjiyya</i>	epistemic validity
<i>ḥukm al-wāqī ‘ī</i>	real Sharī‘a precept or primary Sharī‘a precepts that are in the Mind of the Divine Lawgiver. These precepts are derived from evidence that either emanates certainty or especial conjecture
<i>ḥukm al-zāhirī</i>	apparent Sharī‘a precepts or secondary Sharī‘a precepts that provide a practical standpoint when the primary Sharī‘a precepts are unknown. These precepts are

	derived from the procedural principles
<i>ḥusn</i>	praiseworthiness
<i>ijmāʿ</i>	consensus
<i>ijtihād</i>	the juristic process of deriving Sharīʿa precepts
<i>ʿilm</i>	knowledge
<i>inkishāf</i>	disclose
<i>istiḥsān</i>	juristic preference
<i>istinbāṭ</i>	inference or extrapolation
<i>jazm</i>	the psychological state that is acquired by a person when a person acquires knowledge (<i>ʿilm</i>) or believes he has certainty (<i>qaṭʿ</i>) of a thing
<i>kalām</i>	the Muslim discourse of theology
<i>kashfiyya</i>	disclosure, is one the essential properties of certainty
<i>khavar al-wāḥid</i>	isolated report
<i>mabāḥith al-ḥujja</i>	the discourse of legal epistemology found in the discipline of <i>uṣūl al-fiqh</i>
<i>manṭiq</i>	the Muslim discourse of logic
<i>maqām al-ithbāt</i>	in practice, or in the realm of physical occurrence
<i>maqām al-thubūt</i>	in theory, or in the realm of logical possibility
<i>marjūḥ</i>	less or least preferred
<i>maṣlaḥa</i>	public interest

<i>ma ʿṣūm</i>	impeccable – collectively refers to the impeccable Prophet and Imams
<i>muḥarrikiyya</i>	impulsion, a property of certainty in the realm of existence
<i>mujtahid</i>	jurist
<i>mukallaf</i>	a Muslim who is endowed with the responsibility of enacting Sharīʿa precepts
<i>mutawātir</i>	widely narrated report
<i>naḥs al-amr</i>	actual fact, refers to something that exists in actual fact
<i>qāʿida fiqhiyya</i>	jurisprudential maxim
<i>qaṭʿ</i>	certainty (also used in the context of <i>jazm</i> and <i>yaqīn</i>)
<i>qaṭʿī</i>	certainty-bearing
<i>qawāʿid</i>	general rules/maxims
<i>qubḥ</i>	blameworthiness
<i>qubḥ al-ʿiqāb bi-lā bayān</i>	the blameworthiness of chastisement without explication
<i>raʿis al-ʿuqalā</i>	Chief of all rational agents
<i>rājiḥ</i>	most or more preferred
<i>ṣaḥīḥ</i>	authentic isolated report
<i>shāriʿ</i>	the Divine Lawgiver
<i>sunna</i>	the tradition of the infallible Prophet and Imams
<i>taklīf</i>	endowment of responsibility
<i>taqlīd</i>	to imitate a <i>mujtahid</i>
<i>ṭarīq</i>	way/path

<i>ṭarīqiyya</i>	reflection, one of the essential properties of certainty
<i>tarjīḥ</i>	giving preference
<i>tarjīḥ al-marjūḥ ‘alā ’l-rājih qabīḥ</i>	the blameworthiness of giving preference to the least preferred over the most preferred
<i>‘urf</i>	social custom
<i>uṣūl al-fiqh</i>	legal theory
<i>wājib</i>	obligatory sharia precept
<i>wāqi‘</i>	objective reality
<i>wujūb</i>	obligation, or obligatory nature of a sharia precept
<i>yaqīn</i>	certainty (<i>qaṭ‘</i>) that corresponds to the objective reality
<i>ẓann</i>	conjecture, conjecture per se
<i>ẓann al-khāṣ</i>	especial conjecture
<i>ẓann al-muṭlaq</i>	conjecture qua conjecture
<i>ẓannī</i>	conjectural

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